SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 552

THE YOUNGSTOWN SHEET AND TUBE COMPANY, REPUBLIC STEEL CORPORATION, SHARON STEEL HOOP COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

VOL. II.

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Mr. King: It might have been but it probably might be a contract rate when the Chesapeake & Ohio took over the property, wasn't it?

The Witness: I don't know.

Mr. King: That is very possible, isn't it?

[fol. 771] Examiner Curtis: To be fair with you gentlemen, the same question came up in the Colona and Conway case, and I think it was commented upon in our report in that case. It was regarded as an exceptionally low rate on coal to move by rail to Huntington and thence by water. I don't know whether the Virginian had any part in reducing it, or competition, or what it was, but I think there is something in that report about it. I would like all of the facts concerning it in this record.

(605) Mr. Martin: If anyone has any further facts about it, we will be glad to show them. Perhaps the protestants have some facts about it, or have more facts about it than we have.

As Mr. Adell's next exhibit, Mr. Examiner, I now offer for the record a statement consisting of one sheet, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carload, from the Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on bituminous coal for relative distances."

(Respondents' Exhibit No. 68, Witness Adell, received in evidence.)

Exhibit No. 68 contains a comparison between our proposed ex-river rates and this rate of the Chesapeake & Ohio to Huntington, but instead of using an average distance from the 101 stations in the Logan district I have taken the average distance to Huntington from the 39 mines which shipped coal under this rate during the year 1928. The average distance from these 39 mines is 85.3 miles which produces earnings of 5.86 mills per ton mile for the Chesapeake & Ohio under this rate.

[fol. 772] (606) It should be noted that the rate of the Chesapeake & Ohio to Huntington covers not only the line haul from the mines to destination, but also the assembling service at the mines for the gathering of the coal prelimi-

nary to the road haul movement, which the Commission in several decisions has recognized as complicated and expensive. See the following cases: Lake Cargo Coal Rates, 1925, 100 I. C. C. 513, 527; 126 I. C. C. 304, 324; Lackawanna Steel Company v. Pennsylvania Railroad Company, 88 I. C. C. 759, 763.

There are some branch line operations in connection with these rates.

As stated at page 11 of the Commission's report in Coal, Bituminous, Ex-River from Colona and Conway, to Youngstown, Ohio, I. & S. Docket No. 3282, 163 I. C. C. 3, Exhibit No. 49 herein (607) the volume of coal moved under this rate was approximately 2,000,000 tons annually.

The rate of the Chesapeake & Ohio Railway Company is similar in character to the proposed rates of our company, as both rates are in the nature of proportional rates. By that I mean that the rate to Huntington contemplates a water haul beyond Huntington, While our proposed rates are applicable only where the coal has had a prior water haul to our River Division stations.

[fol. 773] (Mr. King objects to the witness' qualifications to state those facts as to the Chesapeake & Ohio operations. Mr. Fitzpatrick also objects.) (608)

(Thereupon an informal discussion occurred which the reporter was directed not to record, after which the following occurred:)

(609) By Examiner Curtis:

Q. Mr. Adell, turning to your Exhibit No. 68, the lower portion of it showing statement of distances from Chesapeake & Ohio Railway mines, points in Logan District from which coal was shipped during 1929, and so forth, what is the source of your knowledge concerning the coal that was shipped from these points during 1928 to Huntington, W. Va.

A. The lower portion of this exhibit is an exact reproduction of Exhibit No. 47, Witness Koepe in the Colona case.

Q. Do you happen to have a copy of the complete exhibit put in the Colona case, or is this a mere extract from it?

A. I should have said Exhibit No. 49, Mr. Examiner.

Q. Does that take in all of the points?

A. Yes, sir; and they arrive at the same average 85.3. That is the average we have used in our comparison.

Examiner Curtis: Mr. Orcutt, it appears that the lower portion of Exhibit No. 68 is taken from Exhibit No. 49 received in evidence in the Colona and Conway investigation and (610) suspension case. Under our rules of practice, this exhibit, if it is the same, that is, as the exhibit in the Colona and Conway case, may be filed, if filed at all, in its entirety as evidence in this case.

[fol. 774] (Mr. Orcutt, Mr. Fitzpatrick and Mr. King object further to the filing of this exhibit in its entirety.)

(611) Examiner Curtis: The objection of Mr. Orcutt to the source of the information on the lower portion of Exhibit No. 68 purporting to show coal shipped from mines on the Chesapeake & Ohio Railway from mine points in the Logan district during 1928 to Huntington for river shipment is sustained. But leave is granted to supply the exactly identical information by a supplement to the exhibit if taken bodily from the record in the Colona and Conway case, to which they may have an exception if they so desire.

Mr. Orcutt: We note an exception.

Now, Mr. Examiner, I have an objection likewise to the first portion of that exhibit for the reason that the mileages shown under the column headed "Distance in miles" are the average computed from the list down below, which is then moved up to the top of the page and given as the distance from the Chesapeake & Ohio Railway mines, which is not the distance, as is proven by the preceding exhibit, where the distance instead of being 85.3 miles is actually 73.8 miles. In other words, it is a computation from the figures on the lower part of the exhibit and is, therefore, equally inadmissible.

Mr. Martin: I suggest, Mr. Examiner, before this exhibit is excluded, completely that we furnish a copy for the record, according to the regulations, of the Koepe exhibit in the Colona case and see whether then the Examiner will not admit the exhibit or allow it to remain in evidence as Exhibit No. 68. (612)

[fol. 775] Examiner Curtis: The Examiner has ruled, Mr. Martin, that he will not consider—that is, in effect sustaining Mr. Orcutt's objection the data in the lower portion of

Exhibit No. 68 to be probative evidence without being supplemented by a copy of Exhibit No. 49 in the Colona and Conway case.

Mr. Martin: We will supply that exhibit.

Examiner Curtis: And leave was given to supply it.

Mr. Martin: We will supply that exhibit.

Examiner Curtis: Now, then, we are beginning to deal with the question of computation and the use of those figures. On that objection it seems to be a matter of mere mathematics, and we will deal with that on cross-examination.

Mr. Orcutt: But, Mr. Examiner, the computations here are not based upon Exhibit No. 49 introduced by Mr. Koepe in the Colona and Conway case but are based upon the figures in the lower half of the page which you have excluded.

Mr. Martin: Those are exactly the same as the figures appearing in the Koepe exhibit, so it amounts to the same thing.

Mr. Orcutt: That may or may not be. We certainly have some objections to put on the record when that copy is introduced unless Mr. Koepe is here for cross-examination.

Examiner Curtis: You would better make them now, because I have already ruled I will receive it.

Mr. Fitzpatrick: I have an objection for the same reason. I don't know the first thing about Mr. Koepe or his exhibits [fol. 776] in the other (613) case. I object to any testimony or data that he prepared going into this record unless I have an opportunity to cross examine.

Examiner Curtis: Do you want the witness here so as to explain Exhibit No. 49?

Mr. Orcutt: Yes.

Examiner Curtis: That is sustained. The witness will have to be produced under the best evidence rule.

Mr. Martin: I want to take an exception to that. Will the exhibit remain in the record identified as Exhibit No. 68?

Examiner Curtis: The exhibit remains in the record except that it is not considered evidence until it is put in by the witness who prepared the data in the Colona and Conway case and until he is produced as a witness so that he may be subjected to cross-examination under the best evidence rule.

Mr. Martin: I would like to reserve the right, Mr. Examiner, to introduce him at any time during the proceeding.

Examiner Curtis: It will be granted.

Mr. Martin: We have another exhibit and have a good deal of testimony concerning it. I suppose it might be well to start with that in the morning.

(Thereupon an adjournment was taken until Wednesday, September 16, 1931 at 10:00 o'clock a. m.)

[fol. 777] (Hearing was resumed, pursuant to adjournment, at 10 o'clock A. M., Wednesday, September 16, 1931.)

(615) H. J. ADELL resumed the witness stand, and, having been previously sworn, testified further as follows:

Direct examination (continued.)

(618) Examiner Curtis: Now, referring to some objections raised last evening about some testimony about to be offered or tendered by the witness now on the stand, the Examiner stands by his ruling on the objection by Mr. Fitzpatrick, which, if met by respondent, would require the production of a witness with the right of cross-examination.

(After further discussion the Examiner ruled as follows:)

Examiner Curtis: I think enough has been said and that we can now proceed in the regular order. (Tr. 623)

Mr. Martin: Mr. Examiner, I now offer as Mr. Adell's next (625) exhibit a statement consisting of one sheet, of which I shall not read the main heading because it unfortunately duplicates the hearing on another exhibit. But this exhibit does relate to rates from stations on the Baltimore & Ohio Railroad in the Meyersdale No. 1 district of the Meyersdale region and from certain miscellaneous stations to Glenwood, Pa.

Mr. Fitzpatrick: As I understand your ruling of last [fol. 778] evening, Mr. Examiner, you sustained the objection of the protestants to every bit of matter that is contained in Exhibit No. 68 except a showing of the rates from

the Wheeling & Lake Erie River stations to Cleveland, Lorain, Canton and (626) Massillon.

Examiner Curtis: I would not want to make it just that sweeping. I would say that everything that has to do with the movement of traffic under that 50-cent rate is excluded, because this witness is competent to look at a tariff and determine that there is in effect a 50-cent rate.

(After further discussion the following occurred:)

Examiner Curtis: The only way we can leave it in the evidence with a number in the light of this objection would be to have the official copy which goes into the record officially corrected by striking out all of the matter that was ruled out under the objection of Mr. Fitzpatrick yesterday. I cannot see that he would be prejudiced by such action, because later if you decided you wanted to resort to unobjectionable proof in putting in the data which has been ruled out of the exhibit, by a more competent witness, that you can, if prepared by such a witness, give it a sub-number such as 68-A, or something of the sort. But I do rule that (630) in ink the reporter be instructed to strike out all of the data on this exhibit below that described as ex-river bituminous coal from Wheeling & Lake Erie Railway river stations to Cleveland, Lorain, Canton and Massillon, [fol. 779] together with the explanatory matter at the bottom of the page. Then we will leave it in the record with its appropriate number 68.

Mr. Martin: May I have an exception, Mr. Examiner?

Examiner Curtis: The exception is noted. And the Reporter will now physically correct the exhibit that goes into the official record. I want to say further on the record that permission will be given respondents to supplement this information by a competent witness.

By Mr. Martin:

Q. Mr. Adell please comment on your Exhibit No. 69.

(Narrative continued.)

The Witness: My Exhibit No. 69 contains a comparison between our proposed ex-river rates and the rate of the Baltimore & Ohio Railroad Company from its Myersdale No. 1 district in Pennsylvania and Maryland to Glenwood,

Pa., applicable to bituminous coal for transshipment by or on barges and boats.

As appears from the comparison at the top of the exhibit this rate is $1.15 per net ton for a haul of 108 miles, which is the average distance to Glenwood, Pa., from the 142 stations from which this rate applies.

[fol. 780] However, (631) this rate covers both the rail haul and the transfer of coal from cars to barges or boats at Glenwood.

If no allowance is made for the cost of transfer from rail to barge or boats this rate develops earnings of 10.85 mills per ton mile, which is slightly less than the earnings developed by our proposed ex-river rate to Canton for a haul of 87 miles.

However, if we deduct eight cents per ton for the transfer charge the earnings under this rate will be slightly less than 10 mills per ton mile. Eight cents is the dumping charge at lower lake ports for the transfer of coal from cars to vessels.

(632) I have made an investigation as to the movement under this rate. I caused an investigation to be made by having one of our Pittsburgh traffic representatives go down to Glenwood, Pa., which is the transfer point for this coal. He went over the ground very thoroughly; he took pictures of the unloading facilities of the transfer facilities, and he secured from certain individuals at that point movements, and from and to which points these movements occurred. He made a report to me of the facts which he developed and submitted to me the photographs which he took.

(634) Mr. Martin: Mr. Examiner, I now offer Exhibit No. 69, which the witness has been discussing, relating to distances from stations on the Baltimore & Ohio Railroad in the Meyersdale No. 1 district of the Meyersdale region, and from Davistown, and so forth, to Glenwood, Pa.

(Respondents' Exhibit No. 69, Witness Adell, received in evidence.)

Mr. Martin: In view of certain suggestions made off the [fol. 781] record, I will at this time pass the question of movement under these rates with the privilege of putting in

further testimony concerning it after I have given further consideration to it.

(Narrative resumed.)

I am asked if this rate shown on Exhibit No. 69 of $1.15 covers not only the dumping charge at Glenwood but also the mine assembly service at origin. This rate covers the dumping charge at Glenwood, Pa., and it also covers mine assembly service at point of origin.

I have other exhibits showing comparisons between the proposed ex-river rates and other rates on bituminous coal. (635)

Mr. Martin: I now offer Exhibit No. 70, a statement consisting of one sheet which contains a comparison between the proposed ex-river rates and certain rates on ex-river bituminous coal from Cincinnati, Ohio, and certain rates on bituminous coal from southern Illinois groups, Danville, Ill., group, Brazil-Clinton groups, and Linton-Sullivan group to certain destinations.

(Respondents' Exhibit No. 70, Witness Adell, received in evidence.)

[fol. 782] By Mr. Martin:

Exhibit No. 70 is a statement containing a comparison between our proposed ex-river rates and ex-river rates from Cincinnati, Ohio, to points in Indiana, and a comparison between our proposed ex-river rates and rates from the southern Illinois groups to East St. Louis, Ill., and from the Danville, Ill., group, Brazil-Clinton group, and Linton-Sullivan group, to Chicago, Ill.

While the ex-river rates from Cincinnati, shown on this exhibit are perhaps on a lower level than the ex-river rates from Cincinnati generally, nevertheless, they were voluntarily established by the carriers and are used today for the movement of a considerable volume of (636) coal. The total movement of ex-river coal from Cincinnati was 554,132 tons in the year 1928, 620,930 tons in the year 1929, and 659,167 tons in the year 1930, the greater part of which moved to the destinations in Indiana, shown on this exhibit.

These tonnage figures were obtained from Form S reports of the Ohio Bureau of Coal Statistics. Those are recognized publications. The Bureau is a Bureau main-

trained by all of the carriers which haul coal into or through Ohio.

It will be noted that the rate of 91 cents per ton, which is less than our proposed rate to Canton and Massillon, as applied to the hauls to Seymour and Fleming, Ind., of 86.7 and 82.2 miles, develops earnings per ton mile of 10.5 mills and 11.07 mills, respectively.

The other destination points in Indiana, shown on the exhibit, range from 89.8 miles to 160.2 miles distant from Cincinnati, and the rate of $1.04 to these destinations de- [fol. 783] velops earnings per ton mile ranging from 12.87 mills for the shortest distance shown down to 6.49 mills for the longest distance shown.

On the whole, it may be said that these rates, especially (637) for the longer hauls, are upon a slightly lower level than the ex-river rates proposed to be established by our company.

All of the rates shown to East St. Louis, Illinois, and Chicago, Illinois, are rates authorized by the Interstate Commerce Commission in the cases shown in Notes (2) and (3) of the exhibit. The level of these rates is approximately the same as the level of the ex-river rates under investigation in this proceeding. As shown at page 271 of the report of the Commission in the Illinois-Indiana Coal Cases, 128 I. C. C. 265, there is apparently no return loading for coal cars from these mines when made empty in the Chicago district.

The switching absorptions for deliveries within the Chicago district range from 30 cents to 50 cents per net ton, which are several times the switching absorptions at Cleveland, Lorain and Canton and Massillon testified to by Mr. Durham. In referring to the expense of making coal deliveries in the Chicago switching district the Commission said in Ex Lake Iron Ore from Chicago to Granite City, Ill., 123 I. C. C. 503, at page 512, that 80 per cent of the coal is delivered off the line of the line-haul carrier and that there is a per diem reclaim which the line-haul carrier must assume, averaging about $5.17 per car.

Deducting the minimum switching absorption of 30 cents per ton from the rates to Chicago would produce a rate of $1.05 (638) from the Danville, Illinois, group for 135 miles, [fol. 784] $1.25 from the Brazil-Clinton group for 185 miles, and $1.35 from the Linton-Sullivan group for 231 miles.

When allowance is made for these excessive absorptions, it is apparent that the rates to Chicago, shown on the exhibit, which were fixed by the Commission as maximum reasonable rates, compare favorably with our proposed rates, even after the deduction of a switching charge of 13 cents per net ton from the rate to Lorain, Ohio, and an average switching charge of 13.75 cents per net ton from the rate to Cleveland, Ohio. These local rates cover assembly as well as line haul and delivery service.

There is a heavy movement of coal from the southern Illinois groups to the East St. Louis district, as shown at page 101 of the Commission's report in Intrastate Rates on Coal to East St. Louis, Illinois, 142 I. C. C. 95, and to Chicago as shown at pages 275, 276 of the Commission's report in Illinois-Indiana Coal cases, 128 I. C. C. 265.

Those switching charges to which I referred at Chicago are in all instances reciprocal switching charges.

I have compared the suspended rates on ex-river coal with proportional rates on anthracite coal from points in northern West Virginia, Western Pennsylvania and (639) Western New York, to points in Ohio and Western Pennsylvania.

Exhibit No. 71, statement consisting of four sheets, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carload, from the Wheeling & Lake Erie Railway River Division stations to Canton, [fol. 785] Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with rates and earnings on anthracite coal for relative distances."

(Respondents' Exhibit No. 71, Witness Adell, received in evidence.)

The rates on anthracite coal are published in cents per gross ton and for the purpose of this exhibit have been recast to a net ton basis. In order to secure a comparison between our proposed ex-river rates on bituminous coal and a like rate on anthracite coal, I have shown all of the points to which the rate of $1.07 per net ton on anthracite coal applies from Benwood Junction, W. Va., Junction Transfer, Pennsylvania, Buffalo, East Buffalo and Salamanca, New York. This rate applies from Benwood Junction, W. Va., to eight destinations (640) in Northeastern Ohio; from Junction Transfer, Pennsylvania, to

34 points in Ohio; and from Buffalo, East Buffalo and Salamanca, New York, to 66 points in Western Pennsylvania and Ohio.

The rates from Benwood Junction, W. Va., and from Junction Transfer, Pennsylvania, are published as proportional rates, as they apply only to anthracite coal when originating in the State of Pennsylvania.

No anthracite coal is mined at Junction Transfer, Pennsylvania, or Benwood Junction, W. Va. The rates from Buffalo, East Buffalo and Salamanca, New York, are in fact proportional rates as no anthracite coal is produced at any of these points.

[fol. 786] The average distance from Benwood Junction, W. Va., to the eight destinations shown in the first group on the exhibit is 144.2 miles, which closely compares with the average distance from our River Division stations to Cleveland and Lorain. The rate per net ton on the anthracite coal is $1.07, which produces ton-mile earnings of 7.42 mills to be compared with the earnings of 7.48 mills per ton mile and 7.38 mills per ton-mile which will be produced by the proposed ex-river rates to Cleveland and Lorain for slightly longer hauls.

In the next group are all points taking a rate per net ton of $1.07 from Junction Transfer, Pennsylvania, on anthracite coal when originating in the State of Pennsylvania. There are 34 such points with an average mileage of 126.6 (641) miles and average earnings of 8.45 mills.

Pages 2, 3 and 4 of the exhibit show all of the destinations taking the rate of $1.07 per net ton from Buffalo, East Buffalo and Salamanca, New York. There are 66 destinations shown opposite each of these three points of origin.

The average hauls are somewhat longer than the hauls involved under our proposed ex-river rate of $1.10 per net ton to Cleveland and Lorain.

While the hauls are longer the rate is less on the anthracite coal. I used the same destination points in each of those last three.

Thus, from Buffalo the rate of $1.07 applies for an average haul of 193.2 miles. From East Buffalo it applies for an average haul of 195.9 miles and from Salamanca it applies for an average haul of 157.8 miles. The grand average distance from these three points of origin to all

of the destinations shown on pages 2, 3 and 4 on the ex-
[fol. 787] hibit is 182.3 miles.

As the rate of $1.07 applies for distances considerably longer than the distances from our River Division stations to Cleveland, and Lorain, the earnings in mills per ton-mile (642) under these rates on anthracite coal shown on pages 2, 3 and 4 of the exhibit are considerably less than the earnings produced by our proposed ex-river rates of $1.10 to Cleveland and Lorain.

These earnings on anthracite coal range from an average of 5.46 mills per ton-mile from East Buffalo, New York, to 6.78 mills per ton-mile from Salamanca, New York, with a grand average from the three origin points to the 66 destinations of 5.87 mills per ton-mile.

It is obvious that the average earnings derived from each of the groups of rates shown on this exhibit with the possible exception of the group of rates from Junction Transfer, Pennsylvania are upon a lower basis than our proposed rates on ex-river coal, in spite of the fact that anthracite coal is considerably higher in value than bituminous coal. The value of anthracite coal f. o. b. mines ranges from $1.40 to $7.60 per net ton. The sizes known as chestnut, stove, egg and broken grate, range from $6.50 to $7.60 per net ton, f. o. b. mine. Anthracite coal loads in open top cars and is subject to the same transportation conditions as bituminous coal.

By Examiner Curtis:

There is quite a difference in the value of the two kinds of coal. I stated the value of anthracite coal f. o. b. the mine ranged from $1.40 to $7.60 per net ton.

[fol. 788] (643) By Mr. Martin:

Its average loading for the central eastern region, as shown by the Interstate Commerce Commission's statistical report for the year 1929, was 51.75 net tons per car.

I have made a comparison between the suspended rates and rates on ex-lake iron ore.

Exhibit No. 72, a statement consisting of one sheet, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from the Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio,

compared with similar information on iron ore for relative distances is offered for the record.

(Respondents' Exhibit No. 72, Witness Adell, received in evidence.)

Mr. Martin: I should like to make one change in the heading of the exhibit, Mr. Examiner. The words "ex-lake" should precede the words "iron ore" in the last line of the heading.

Examiner Curtis: That will be done physically on the official copy.

(Narrative resumed.)

Rates on ex-lake iron ore are similar to rates on ex-river coal in that both rates require a previous water haul of the commodity. Most of the rates shown on this exhibit cover hauls in the same territory to which proposed rates on ex-river coal apply but in the reverse direction. Thus, the exhibit shows rates on ore from Lorain to Mingo Junction, from Cleveland to Steubenville, and from Huron to Steubenville, Wheeling and Martins Ferry.

[fol. 789] Rates on ex-lake iron ore are published in cents per gross ton and for the purposes of this exhibit have been recast to a net ton basis.

It will be noted that the rates on this ore are on a substantially lower basis than the proposed rates on ex-river coal. For example, the highest earnings shown upon the exhibit are 8.41 mills per ton mile for a haul of 87 miles from (645) Huron to Massillon, while the longer hauls which approximate the average hauls from our River Division points to Cleveland and Lorain, the earnings on ore are less than six mills per ton-mile.

For the 29 destinations shown, other than Granite City, Illinois, the average distance is 174.8 miles, the average rate is 92.8 cents per net ton; and the average earnings are 5.31 mills per ton-mile.

Particular attention should be called to the rate from Chicago to Granite City, Ill., which is $1.07 per net ton for hauls averaging about 277 miles and develops less than 3.9 mills per ton mile. This rate was authorized by the Interstate Commerce Commission in Ex-Lake Iron Ore from Chicago to Granite City, Illinois, 120 I. C. C. 75; 123 I. C. C. 503.

In other words, the Commission has approved a rate for the movement of ore slightly less than our proposed ex-river rate to Cleveland, covering a haul of almost twice the average distance from our river division stations to Cleveland and Lorain. Moreover, the Granite City rate is [fol. 790] subject to heavy absorptions. As shown in the Commission's report in that proceeding the switching absorption at Chicago, Illinois, is $9.11 per car and at Granite City, Illinois, the switching absorptions range from 37 cents to $5.60 per car, or a total switching absorption of $9.48 to $14.71 per car.

Many of the rates on ore from Lake Erie ports which approximate (646) the proposed rates to Cleveland and Lorain, apply for much longer hauls. Thus, the rate of 108.9 cents applies from Huron to Monessen, Pennsylvania, a distance of 223.7 miles, and from South Lorain, to Donora, Pennsylvania, a distance of 220.2 miles, and the rate of 111.6 cents applies for distances ranging from 232.3 miles to 294.7 miles.

It is fair to state that the ore rates are subject to spotting charges ranging from three cents to five cents per gross ton. However, these spotting charges would have little effect upon the earnings in mills per ton-mile shown upon the exhibit, except in the cases of short hauls.

There are many elements of similarity between the movement of iron ore and of ex-river coal. Both commodities move in open top cars, and loss and damage claims are negligible.

The value of by-product coking coal is approximately $1.50 per net ton at the mine while the value of ex-lake iron ore at the lower Lake Erie ports ranges from $4.40 to $4.80 per gross ton.

The average loading of ore is somewhat heavier than the average loading of coal.

As shown by Report No. 0-1 of the Ore & Coal Exchange for January 9, 1931, the average loading of ore moving from all Lake Erie ports during 1929 was 60.8 gross tons [fol. 791] and during 1930 it was 61.03 gross tons. The average loading of ore to Granite City is stated at page 506 of the Commission's (647) second report in the Granite City case to be about 50 gross tons. The movement of ore is of course very heavy.

From Huron to the destinations shown opposite it on the exhibit the Wheeling and Lake Erie had the following movements during the two year period 1929-1930: To Canton 7763 cars; to Massillon 3381 cars; to Steubenville, 17,540 cars; to Wheeling 4152 cars; to Martins Ferry 3179 cars; to McKeesport 573 cars; and to Mingo Junction, 2193 cars.

The rates from Huron to Monessen did not become effective until April 15, 1931, since which time the Wheeling has enjoyed a substantial movement of ore over this route.

During the two-year period referred to the Wheeling moved from South Lorain to Mingo Junction a total of 11,451 cars; to Bessemer a total of 8 cars; to Donora a total of 4,459 cars; and to Clairton a total of 4 cars.

(648) Those were all cars likewise loaded with ex-lake ore.

By Examiner Curtis:

Taking the iron ore, lake ports to some of these destinations stated in my exhibit, I believe it is possible to use any of that equipment to haul coal in the opposite direction.

By Mr. Martin:

The ore moves from Huron, the port of the Wheeling & Lake Erie Railway Company to the following stations on the Wheeling & Lake Erie Railway Company's River Di-
[fol. 792] vision: Steubenville, Martins Ferry, Mingo Junction and to the City of Wheeling, W. Va., which is across the river from Martins Ferry.

I have shown the actual movements of loaded cars of ore to those particular destinations in the statement which I gave you a moment ago, and in addition to the movements from Huron we also have a route from Lorain or South Lorain to Mingo Junction. (649)

By Mr. Martin:

Q. Mr. Adell, are you sufficiently familiar to state whether or not the cars which are used for the movement of ex-lake ore from Huron and South Lorain to these River Divisions stations and to Wheeling, W. Va., are the same type of car which are used by the Wheeling & Lake Erie for the loading of coal in the reverse direction?

A. I would say that the same type of equipment is used for this proposed loading of coal that is used on the iron ore from Huron, Ohio.

Q. So that cars made empty of ex-lake ore at river division stations would be available for return loading with coal from Mingo Junction or Martins Ferry if the proposed ex-river rates become effective?

A. These cars would be available.

(Narrative resumed.)

We do not have specific information as to the movements from Cleveland, Toledo and Ashtabula Harbor to destinations shown on the exhibit, but it appears from Report No. 0-1 of the Ore and Coal Exchange for the years [fol. 793] 1929 and 1930 that during this period the receipts at Cleveland for shipment to interior furnaces totaled 12,749,524 gross tons; the (650) receipt at Toledo for shipment to interior furnaces totaled 2,172,846 gross tons; and the receipts at Ashtabula Harbor for shipment to interior furnaces 14,591,445 gross tons.

The shipments from Lake Erie ports during 1929 were in excess of 34,000,000 gross tons and in 1930 were in excess of 24,000 gross tons.

The movement from Chicago to Granite City, Ill., is about 750,000 gross tons annually, as shown at page 511 of the Commission's second report in the Granite City case.

Nevertheless, after taking all these considerations into account, it is apparent that the rates on ex-lake iron ore are on a much lower basis than the proposed rates on ex-river coal.

Exhibit No. 73, a statement consisting of two sheets, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from the Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on furnace fluxing stone for relative distances" is now offered for the record.

(Respondents' Exhibit No. 73, Witness Adell, received in evidence.)

This Exhibit No. 73 shows a comparison between the proposed ex-river rates and rates on furnace fluxing stone between Kenneth, Ind., and destination points in

Indiana and Illinois between certain origin points in Ohio [fol. 794] and West Virginia. It will be readily apparent that the rates on fluxing stone shown in this exhibit are on a substantially lower level than the proposed rates on ex-river coal.

For instance, for hauls from Fairport Harbor to Canton and Massillon, which exceed the average distance from our river division stations to Canton, the rate on fluxing stone is only 80.4 cents per net ton. Rates of 93.8 cents per net ton on fluxing stone (which approximate our proposed ex-river rate of 95 cents to Canton and Massillon) apply to hauls ranging from 149 miles to 183 miles. The distance from Piqua to Portsmouth is 147 miles which is the same as the average distance from our River Division stations to Cleveland, but the rate on fluxing stone is only 90.2 cents per net ton as compared with the proposed ex-river coal rate of $1.10 (652) per net ton.

As shown in Note 6 of the exhibit, the Western Ohio origin group includes Marblehead, Marble Cliff, Gibsonburg, Woodville, Carey, Narlo, Martin and McVittys, Ohio. These are all important producing points of fluxing stone and the Western Ohio group is one of the most important, if not the most important, fluxing stone producing territories in the United States.

The destination districts shown on the exhibit to which group rates apply from the Western Ohio group are likewise very important consuming territories. The most important of these is the Youngstown District of the Mahon- [fol. 795] ing Valley in which are located the large furnaces of the Republic Steel Corporation at Youngstown and Warren, Ohio; of the Youngstown Sheet and Tube Company at Youngstown and Hubbard, Ohio; of The Carnegie Steel Company at Youngstown, Ohio, and of the Struthers Iron and Steel Company at Struthers, Ohio, all of which are shown in detail on Exhibit No. 50.

In the Canton-Massillon district are located two important furnaces of the Republic Steel Corporation. The Wheeling-Steubenville district includes furnaces at Wheeling, Steubenville, Mingo Junction, Martins Ferry and Bellaire, Ohio.

As shown by the exhibit, the earnings per ton-mile for the average hauls of 119.3 miles from the Western Ohio

group to the Canton-Massillon district are 6.88 miles per ton-mile; for (653) the average haul of 158 miles from the Western Ohio group to the Youngstown district, 5.94 mills per ton mile; and for the average haul of 186.3 miles to the Wheeling-Steubenville district, 5.42 mills per ton-mile. These rates are obviously on a lower level than the proposed ex-river rates.

The second sheet of this exhibit shows how the short line mileages used on the first sheet were computed.

In this connection it may be noted that the earnings per ton-mile shown on the first sheet of the exhibit are determined from the short line mileages. If mileages of the actual movement had been used the earnings per ton-mile would have been less.

[fol. 796] At the Western Ohio quarries fluxing stone sells for approximately 70 cents per gross ton f. o. b. quarry. Like coal this commodity moves in open top cars, and is not susceptible to loss or damage. It loads more heavily than coal. The average loading as shown by a recent report of the Public Utilities Commission of Ohio (National Mortar & Supply Company v. Pennsylvania Railroad Company et al., Docket No. 5279) is 60.3 net tons.

There is a substantial volume of movement under most, if not all, of the rates shown in this exhibit.

For example, from points in the Northwestern Ohio group to Ohio points in the Mahoning Valley Group the movement during (654) the period from January 1, 1928, to June, 1930, was 1,771,274 gross tons.

For the same period the shipments from the same origin groups plus Marble Cliff, to points in the Steubenville-Wheeling district aggregated 1,425,387 gross tons.

The movement from Fairport Harbor to Canton and Massillon, Ohio via the Baltimore & Ohio Railroad during the period from May 15, 1929, to June 30, 1930, was 59,218 gross tons and from Marble Cliff, Ohio, to Mingo Junction, Ohio, via the Pennsylvania Railroad during the years 1929 and 1930 the movement was 340,425 gross tons.

(655) These movements were taken from exhibits presented by the various railroads in the 13th Section case before the Commission at the present time, the 13th Section fluxing case, I. C. C. Docket No. 23625 and related cases.

That 13th Section case was an endeavor to increase all of these rates in my exhibit.

[fol. 797] The rates shown on the exhibit from Fairport Harbor to Canton and Massillon, Ohio, and from Marble Cliff to Mingo Junction and Steubenville, Ohio, are rates prescribed by the Public Utilities Commission of Ohio.

The Ohio intrastate rates from western Ohio producing points to consuming points in eastern Ohio are now before the Interstate Commerce Commission in I. C. C. Docket No. 23625 and related cases.

(656) Nevertheless, these Ohio rates have been in effect for a number of years and have moved tremendous tonnages of fluxing stone, as I have previously stated.

Exhibit No. 74 a statement consisting of two sheets, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on crushed stone for relative distances" offered for the record.

(Respondents' Exhibit No. 74, Witness Adell, received in evidence.)

Exhibit No. 74 is a comparison of the proposed ex-river rates with rates on crushed stone from origins in Ohio, Illinois, Wisconsin and Indiana to destinations in Ohio, Illinois, Indiana and Michigan.

The mileages shown for the movement of crushed stone in this exhibit range from 66 miles up to 206.6 miles and the rates range from 70 cents to 113 cents per net ton and develop earnings ranging from 13.64 mills per ton mile for the shortest (657) distance down to 4.88 mills per ton-mile for the longest distance. It should be noted in connection with the crushed stone rates to Chicago, Illinois, that the [fol. 798] 70 cents per net ton covers an average haul of 91.2 miles and produces average earnings of 7.67 mills per ton-mile. The 75 cent rate covers an average haul of 119 miles and produces average earnings of 6.30 mills per ton-mile. These rates throughout are on a lower level than the proposed ex-river rates which are under consideration in this proceeding.

Crushed stone is a commodity which is used for road building purposes and has a very wide spread and general

movement. Quarries exist at all of the origin points shown on the exhibit.

Several of the destination points, such as Cincinnati, Chicago and Detroit, are large centers of population. It is therefore proper to assume that there is a considerable volume of movement under these rates.

As shown by the report of the Commission in its Docket No. 22598, Interstate Amesite Company v. Akron, Canton & Youngstown Railway Company et al., the value of crushed stone ranges from 80 cents to $1.50 per ton f. o. b. shipping points. The average loading on all stone (broken, ground and crushed), for the Central Eastern Region, as shown by the Interstate Commerce Commission's statistical report for the year 1929, is 55½ net tons. The commodity moves in open top cars and is not susceptible to loss or damage.

(658) All of the rates shown to Chicago, Illinois and Detroit, Michigan, and all of the rates from Greencastle and Limedale, Indiana, are rates authorized by the Interstate Commerce Commission in the cases shown in Notes [fol. 799] 2, 3 and 4 of the exhibit,

From the origin points shown on the exhibit to the Chicago district, approximately 250,000 tons of crushed stone moved during the year 1925, as shown at page 638 of the report of the Commission in Chicago Gravel Company v. Atchison, Topeka and Santa Fe Railway Company et al., 118 I. C. C. 633.

I have not yet commented upon the proportional rate on crushed stone from various stations in Wisconsin to Chicago, Illinois. This rate of 60 cents per net ton is upon an even lower level than the other crushed stone rates shown on the exhibit. It applies for distances ranging from 85.3 miles to 105 miles, and develops earnings as low as 5.71 mills per ton mile.

I have made a similar comparison between the proposed ex-river rates and rates on common sand.

Exhibit No. 75, a statement consisting of three sheets, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on said — for relative distances, offered for the record.

(Respondents' Exhibit No. 75, Witness Adell, received in evidence.)

(659) This Exhibit No. 75 consists of three sheets.

The first two sections of the exhibit (on sheets 1 and 2) cover local rates on sand from points in Wisconsin, Indiana and Illinois to Chicago.

[fol. 800] The next two sections of the exhibit (on sheet 2) cover proportional rates from points in Wisconsin and Illinois to Chicago and the last section of the exhibit (on sheet 3) covers local rates from points in Indiana and Illinois to Chicago.

In the case of Chicago Gravel Company, et al. v. Atchison, Topeka & Santa Fe Railway Company et al., 118 I. C. C. 633, the Commission grouped the origin points of common sand into zones based upon their distance from Chicago. Zone 2 embraces producing points within 51 to 100 miles of Chicago and Zone 3 embraces producing points distant 101 to 150 miles from Chicago.

The first section of the exhibit (on sheet 1) shows 52 origin points in zone 2, from which zone the rate to Chicago is 70 cents per net ton for a single line haul. This rate develops earnings ranging from 12.82 mills per ton-mile down (660) to 6.64 mills per ton-mile.

As shown on sheet 1 of the exhibit the average distance from these 52 origin points in Zone 2 to Chicago is 85 miles and the average earnings are 8.24 mills per ton-mile, based upon the rate of 70 cents per net ton for a single-line haul.

The distances from our River Division stations to Massillon and Canton average 80 miles and 87 miles, respectively, and the earnings under these proposed ex-river rates are 11.87 mills and 10.92 mills per ton-mile respectively.

The next section of this exhibit affords a comparison with the proposed ex-river rates to Cleveland and Lorain. This [fol. 801] section covers 23 origin points in Zone 3, which are distant from 101.6 miles to 158.4 miles from Chicago. The rate for single-line hauls from points in Zone 3 is 75 cents per net ton, which develops earnings in mills per ton-mile ranging from 7.46 down to 4.73 which — an average for the 23 points of 6.24 mills per ton-mile for an average distance of 120.1 miles.

The next two sections of the exhibit, appearing on sheet 2, relate to proportional rates to Chicago from 43 origin points in Zone 2 and from 10 origin points in Zone 3.

These proportional rate, which are perhaps more strictly comparable with our proposed ex-river rates, (which are in the nature of proportional rates) develop average earnings of (661) 7.10 mills per ton-mile for an average haul of 84½ miles frm points in Zone 2 and average earnings of 5.75 mills per ton-mile for an average haul of 113.1 miles from points in Zone 3. In each case the proportional rate is 10 cents per ton lower than the local rate.

The last section of the exhibit, appearing on sheet 3, covers a number of miscellaneous rates on sand from points in Indiana and Illinois to Chicago, which may be compared with the proposed ex-river rates. Certain of these rates were authorized by the Interstate Commerce Commission as shown by Notes 2 and 4 appearing on sheet 3.

All of these rates are on a substantially lower level than our proposed ex-river rates. For example, the rates of 80 cents per net ton authorized by the Commission in the Chicago Gravel Company case apply for distances of 141 and 158 miles, which approximate the average distance from [fol. 802] our River Division stations to Cleveland and Lorain where our proposed rate is $1.10.

The rate of 90 cents per net ton authorized by the Commission in the case of Sand From Pleasant Lake, Indiana applies for a haul of 165 miles and produces earnings of 5.45 mills per ton-mile. The 95 cent rate from Spring Valley, Illinois, covers a haul of 108.8 miles and the $1.01 rate from Attica, Indiana, covers a haul of 230.8 miles.

Sand moves in open top cars and is not susceptible to loss (662) or damage. It average loading is about 50 tons, as shown at page 636 of the report of the Commission in the Chicago Gravel Company case. The movement of common sand is very general from the origin points shown on this exhibit to Chicago, which results in a very heavy annual volume.

At page 638 of the report of the Commission in the Chicago Gravel Company case it is stated that the annual volume in 1925 from the producing points in Zones 2 and 3 to the Chicago-Gary district amounted to approximately 2,500,000 tons.

As shown at page 637 of the report in the Chicago Gravel Company case the value of sand is about 30 cents per ton, f. o. b. origin.

Before leaving this exhibit I should state that all of the rates shown on the first two sheets of the exhibit cover single line hauls only and are subject to an arbitrary addition of 20 cents per ton for a two-line haul.

[fol. 803] (665) Exhibit No. 76 a statement consisting of one sheet, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from the Wheeling & Lake Erie Railway Company River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on sand gravel and clay offered for the record.

Permission granted to amend the heading to read "clay gravel."

(666) (Respondents' Exhibit No. 76, Witness Adell, received in evidence.)

My Exhibit No. 76 is a comparison between the proposed ex-river rates and a number of maximum mileage scales ordered in by the Interstate Commerce Commission on sand, gravel and clay gravel from various origins to various destinations as shown in the exhibit.

With one exception all of these scales are the same and provide for a rate of $1.20 per net ton for hauls of 147 miles and 149 miles, the average distances from River Division stations to Cleveland and Lorain, $1 per net ton for hauls of 87 miles, which is the average distance from our river division stations to Canton and 90 cents per net ton for hauls of 80 miles which is the average distance from river division stations to Massillon.

While these scales are on a slightly higher level than the proposed ex-river rates it should be noted that they are prescribed as maximum scales, while the proposed ex-river (667) rates should be tested as not less than minmum reasonable rates.

[fol. 804] At page 733 of its report in Sand, Gravel, Slag, Stone and Chert between, from and to points in Mississippi Valley territory, 165 I. C. C. 731, the Commission says:

"As the result of the orders issued in the Southeastern case and subsequent voluntary extensions by the carriers,

the 17517 scales now apply interstate on this traffic throughout most of the southern territory."

These commodities move in open top cars and the volume of movement is very heavy under all of these scales. The average loading is slightly less than the average loading of coal on our line.

At page 728 of the report of the Commission in Pennsylvania Sand & Gravel Producers Association v. The Baltimore & Ohio Railroad Company et al., 104 I. C. C. 717, it is stated that the average loading of sand and gravel is in excess of 50 tons.

At page 154 and 157 of the report of the Commission in Rates on Chert, Clay, Sand and Gravel within the State of Georgia, 122 I. C. C. 133, it is stated that the average loading on sand and gravel is 50 tons per car, and the average loading is again stated at 55 tons per car at page 341 of the Commission's report in Brilliant Sand Company v. Baltimore & Ohio Railroad Company, 139 I. C. C. 339.

As shown by the Interstate Commerce Commission's statistical (668) report for the year 1929 the average loading of sand for the Central Eastern Region is 55.04 net tons per car. In the reports which I have mentioned the values of sand are variously stated at prices ranging from [fol. 805] 20 cents per ton to 125 cents per ton f. o. b. shipping points. The value of gravel is stated at 35 cents to 85 cents per ton, clay gravel at 25 cents to 45 cents per net ton, and washed gravel at 40 cents to 80 cents per net ton, all f. o. b. shipping point.

I have prepared another statement showing a comparison between the proposed ex-river rates and rates on crushed stone, sand and gravel between points in the State of Ohio.

Exhibit No. 77, a statement showing proposed rates and earnings on ex-river bituminous coal, carload, from Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on crushed stone, sand and gravel for relative distances within the State of Ohio is offered for the record.

(Mr. Orcutt objects.)

(670) The Ohio carriers of the Central Freight Association made a study of the tonnage and revenue on crushed stone, sand and gravel in carloads moving between points

in the State of Ohio during the six months' period ended September 30, 1926.

I might state this study was prepared by the individual Ohio carriers covering traffic handled by them and then furnished to Chairman Morris of the Central Freight Association, who filed a composite statement covering all of the traffic for that period, and furnished each of the Ohio carriers with a copy of the composite statement.

I have a copy of that statement furnished by Chairman Morris in my hand.

[fol. 806] (671) (Mr. Orcutt objects. Not so much probative value as the fact it is misleading. It has no probative value, but, on the other hand, might mislead.)

The Witness: This study covered 68,415 cars with a total lading of 8,012,239,381 pounds (which is equivalent to 4,006,119 net tons) and a total revenue of $2,392,44.12.

The result of this study is set forth in the detailed statement appearing in the center of the exhibit.

The movements are divided into five mile blocks and the 672) statement shows that for the block which includes 80 miles the average weighted rate was 84.9 cents per net ton as developed by the movement of 1193 cars.

Similarly, for the block containing 87 miles the average weighted rate was 85.8 cents per net ton and for the block containing 147 and 149 miles the average weighted rate was 101½ cents per net ton.

The rates which I have just read are the rates under which the traffic shown on the exhibit actually moved as shown by the statement furnished me by Chairman Morris. They are the average weighted rate furnished us by Chairman Morris of the C. F. A. The average weighted rates appear throughout the exhibit, in the lower part (673) of the exhibit.

The fourth column is where they begin and the occur in the tenth column. They appear in the fourth and tenth column of the exhibit opposite the appropriate mileages. [fol. 807] The revenue shown on this statement is the revenue that accrued on the number of cars in the study, the same revenue that is shown in this big statement.

(674) Mr. Martin: I think, Mr. Examiner, the criticism of the use of the word "present" is well taken. I think the exhibit itself is perfectly clear that it is the movement

and the rates prevailing during the six months' period ended September 30, 1926. If the sixth and twelfth columns were changed to read "average revenue per car based upon average weighted rate," would that be proper?

Examiner Curtis: Well, based upon the average rate charged.

Mr. Martin: On the average rate charged?

Examiner Curtis: Yes.

Mr. King: That is not shown on the exhibit.

Mr. Orcutt: Which was it?

Mr. Martin: The average weighted rate, because that was applied directly to the tons in the car, the average loading.

Examiner Curtis: That is the average rate charged, is it not?

Mr. Martin: There might be the same confusion in somebody else's mind as in Mr. Orcutt's mind. So if we use what is in column 4, average weighted rate, and transfer that to column 6—average revenue per car based upon average weighted rate——

Examiner Curtis: Cut out the word "present" and substitute "weighted."

[fol. 808] Mr. Martin: I would like to make it just like it is in (675) column 4—average weighted rate.

Examiner Curtis: Based upon average weighted rate?

Mr. Martin: Yes, sir.

Examiner Curtis: Then will you correct that physically on the official copy?

Mr. Martin: Yes, sir. And the same correction, if you please in the heading on column 12.

Examiner Curtis: Strike out the word "present."

Mr. Martin: Yes; and insert the word "weighted" after "average." Does that remove your objection?

Mr. Orcutt: Yes, Mr. Examiner.

(Respondents' Exhibit No. 77, Witness Adell, received in evidence.)

These rates which are substantially lower than the proposed ex-river coal rates for similar distances are shown just below the tabulation of ex-river coal rates at the head of the exhibit.

The Ohio intrastate rates on crushed stone, sand and gravel were prescribed by the Public Utilities Commission of Ohio (676) in 1921, and the carriers made an unsuccess-

ful effort to have these rates increased under the 13th section of the Interstate Commerce Act. (See In the Matter of Intrastate Rates on Sand, Gravel and Crushed Stone Moving within the State of Ohio, Docket No. 14252, 85 I. C. C. 66.)

It should also be noted that for many years the Ohio carriers have been obliged to pay to the State of Ohio an excise tax of four per cent of their gross earnings from intrastate traffic.

[fol. 809] Mr. King: I object to the testimony as to that fact unless he shows the Commission specifically takes that into consideration when it makes rates and adds four cents to pay the tax.

(677) (Objection overruled and exception noted.)

There is no similar burden on interstate rates. This excise tax has recently been reduced to three per cent, effective in 1933.

I have already referred to the values and transportation characteristics of crushed stone, sand and gravel in connection with the earlier exhibits.

(678) I have made a comparison between earnings per car and per car mile under the proposed ex-river rates and similar earnings under rates applicable to light loading commodities.

Exhibit No. 78, a statement consisting of a single sheet, entitled "Statement showing proposed rates and earnings on ex-river bituminous coal, carloads, from the Wheeling & Lake Erie Railway River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, compared with similar information on light loading commodities for relative distances offered for the record.

(Respondents' Exhibit 78, Witness Adell, received in evidence.)

(679) This exhibit No. 78 shows a comparison between the earnings per car mile and per car under the proposed ex-river rates and similar earnings developed by such light loading commodities as fertilizer and fertilizer materials, live stock, common lime, agricultural and fluxing lime, sewer pipe, logs, straw and hay.

[fol. 810] For information, a comparison has also been made on the basis of rates in cents per net ton.

As in the case of all of my exhibits the average loading used for the proposed ex-river rates is 56.6 tons per car which is the actual average loading of all cars of coal moving over the rails of our company during the years 1929 and 1930.

It will be readily apparent that the average earnings per car mile and per car under the proposed ex-river rates are substantially greater than those produced by the rates on fertilizer and fertilizer materials, live stock, common lime, agricultural and fluxing lime, sewer pipe, logs, straw and hay. All of the rates shown (with the exception of rates (680) on hay in Central Freight Association territory) are mileage scale rates approved by the Interstate Commerce Commission in the cases shown in notes 3, 5, 7, 10, 12, 14, 17 and 18 on the exhibit.

The car loadings of the various commodities other than coal shown on the exhibit, which were used for the compilation of the car mile and car earnings are the average loadings shown in the reports of the Commission in the applicable cases listed in the notes at the foot of the exhibit, except in the cases of straw and hay where the average loadings used were taken from statistical reports of the Interstate Commerce Commission for the Central Eastern Region for the year 1929, and except in the case of common lime and agricultural and fluxing lime where the aver- [fol. 811] age loadings were taken from the testimony of Witness Eldridge at page 174 of the record in Coal, Bituminous, Ex-River from Colona and Conway, Pa., to Youngstown, Ohio, in I. & S. Docket No. 3282 (see notes 15 and 16 of the exhibit).

At page 421 of its report in Ohio Farm Bureau Federation vs. Ahnapee and Western Railway Company, 146 I. C. C. 419, the Commission states that the delivered price of fertilizer to consumers in Ohio ranges from $24.45 to $85.00 per net ton for the year 1927.

It is well known that the value of livestock is many times greater per ton than the value of bituminous coal. At page (681) 762 of its report in Eastern Live Stock Cases of 1-26, 144 I. C. C. 731, the Commission briefly summarizes the transportation characteristics of live stock by saying that it requires special facilities for loading, unloading, feeding, watering and drenching; that special equipment is required which necessitates a large amount of empty return move-

ment; that excessive cleaning of cars is involved; and that the traffic requires expedited service.

Agricultural lime sells at approximately $5.50 per net ton at the plant. It is put up in paper bags holding 50 pounds and is shipped in box cars. Building lime sells at $5.50 to $11.50 per net ton at the plant and is shipped in box cars, in bulk, boxes or bags. Grain doors are supplied by the carriers at their own expense.

At page 520 of its report in Cancellation of Commodity Rates on Sewer Pipe in Central Freight Association Territory, 157 I. C. C. 514, the Commission states that the average value of sewer pipe in the year 1926 was $14.69 per ton and at page 521 of the same report states that the claim payments on sewer pipe and drain tile transported in 1927 [fol. 812] averaged $5.55 per car.

The same page of the report shows other information to the effect that the claim payments on this commodity are relatively very heavy as compared with the claim payments on traffic in general.

(682) The rates on sewer pipe between points in Central Freight Association territory are now on the basis of 90 per cent of sixth class while the rates on the same commodity between stations in the State of Ohio are upon the basis of 75 per cent of sixth class and are subject to the payment of the excise tax on gross earnings to which I have previously referred.

The rates on logs between points in Central Freight Association territory are on the basis of 65 per cent of sixth class. As shown on pages 319 and 321 of the report of the Commission in Williamson Veneer Company vs. The Baltimore & Ohio Railroad Company, 159 I. C. C. 318, logs have a value of approximately $3.20 to $8.60 per net ton at the shipping point.

Straw sells at approximately $2 to $4 per net ton at point of origin; and as shown on page 670 of the report of the Commission in Hay, Straw, Excelsior and Other Commodities between Official territory and southern points, 146 I. C. C. 664, hay had a value of approximately $6 to $9 per ton during the years 1927 and 1928.

I have prepared a statement to show how I arrived at the average distances from Wheeling & Lake Erie Railway River Divisions stations to Canton, Cleveland, Lorain and Massillon.

[fol. 813] (683) Exhibit No. 79 a statement consisting of one sheet, headed "Statement showing average distances from the Wheeling & Lake Erie River Division stations to Canton, Cleveland, Lorain (South Lorain) and Massillon, Ohio, offered for the record.

(Respondents' Exhibit No. 79, Witness Adell, received in evidence.)

Exhibit No. 79 which shows the distance from each of the River Division stations named as origin points in our tariff No. 166, I. C. C. No. 1669, to Canton, Cleveland, Lorain and Massillon, and the average distances from all such stations to each destination.

In further explanation of this exhibit I may say that our mileage tariff No. 7-B, I. C. C. No. 1632, does not show fractions of a mile for any of the distances between our stations; hence, fractions of miles have been disregarded in the (684) averages shown at the foot of the exhibit.

I have made a comparison between the car-mile revenue under the proposed ex-river rates and the car-mile revenues received by our company and other carriers on all traffic, and it is shown by my Exhibit No. 80, which is offered for the record.

(Respondents' Exhibit No. 80, Witness Adell, received in evidence.)

In this exhibit I have compared the average earnings per car mile developed by the proposed ex-river rates (which (685) range from 36.85 cents to 67.1 cents) with our average car mile revenue on all traffic hauled in the year 1929, with the average car-mile revenues received by the [fol. 814] New England region carriers, Great Lakes region carriers, Central Eastern region carriers, and all Eastern district carriers on all traffic hauled in the same year.

It will be noted that the average car mile earnings on this ex-river coal to Canton and Massillon are substantially greater than the average earnings per car mile which our company received during the year 1929 for an average haul of 91½ miles and that to Cleveland and Lorain are only about ten per cent less than this average.

The average haul of our company for the year 1929 is only slightly higher than the average distance from our River Division stations to Canton but the average earnings

per car mile under the proposed ex-river rate to Canton are more than 50 per cent higher than the average car mile revenue received by our company on all traffic hauled in 1929.

The average hauls on all traffic by the Great Lakes Region carriers, the Central Eastern Region carriers and Eastern District carriers in 1929 closely approximate the average hauls from our River Division stations to Cleveland and Lorain but the earnings per car mile received by these carriers are substantially less than the earnings which will be developed by the proposed ex-river rates to Cleveland and Lorain. (686)

It should be noted that all of the average ton mile earnings shown upon this exhibit have been computed after the deduction from gross revenues of switching charges absorbed by the carriers involved, including a deduction of 13 cents per ton at Lorain from our proposed ex-river rate to that point, and a deduction of the average switching absorption of 13.75 cents per ton at Cleveland from our [fol. 815] proposed ex-river rates to that point.

I am asked what further comment I have to make upon the group of exhibits which I have just introduced. As Mr. Durham has stated in his testimony we do not contend that the suspended rates are maximum reasonable rates, but we do contend that they are not less than reasonable minimum rates.

The exhibits which I have introduced show that there are numerous rates on bituminous coal, anthracite coal and other heavy loading commodities covering movements in Central Freight Association territory which are no higher than our proposed ex-river rates, and in many cases are lower than the proposed rates, that there are many rates on light loading commodities in the same territory which develop earnings per car mile and per car less than those developed by our proposed rates, and that our earnings per car mile under the proposed rates are in excess of the average earnings on all (687) traffic of all carriers in the New England region in the Great Lakes region, in the Central Eastern region, and in the Eastern district and compare favorably with our own average earnings on all traffic. These exhibits, therefore, demonstrate that the proposed ex-river rates are not below the level of reasonable minimum rates.

By Examiner Curtis:

The general average of rates on anthracite coal is much higher than on bituminous coal.

[fol. 816] Cross-examination.

(689) By Mr. Orcutt:

I personally checked each of those mileages on Exhibit 67 in the lower half of that exhibit from the Chesapeake & Ohio mileage tariff on file with the Commission. I am sure I checked them from the Chesapeake & Ohio mileage tariff.

As to why I used the official railroad station list, we have a standard note on all of our exhibits that the mileages are computed from the official railroad station list on file with the Interstate Commerce Commission. The official railroad station list and the mileage table would be one and the same publication. (690) They are one and the same publication so far as I know.

I have seen the station list of the Chesapeake & Ohio Railway. I saw their tariff I. C. C. 11081.

I am acquainted with our River Division. I have never been down on the River Division, but I have a very good idea where these points are located.

By Mr. Orcutt:

Q. Mr. Durham not having mentioned any transfer plant as to Rush Run, Salt Run, Steubenville, Stringer, Tiltonville, Warrenton, Yorkville or Terminal Junction or Brilliant, are we correct in assuming that there — no transfer plants at those points and that at none of them is construction of such a plant contemplated by the Wheeling & Lake — Railway at this time?

[fol. 817] Mr. Martin: We intend, Mr. Orcutt, to construct, if the traffic will justify it, one transfer plant on our River Division in addition to those which are there at the present time and that is the plant at Mingo. You have heard Mr. Meister state he has a transfer plant at Martins Ferry. There is also a transfer plant owned by the Wheeling Steel Corporation, I think, or some affiliated corporation, at Martins Ferry. There may be other transfer plants at other points—probably one at Steubenville although I am not perfectly clear about it. And, of course, it is pos-

sible someone may construct a transfer plant at any one of these points at any time. They are all points that have reasonable access to the river. We do not intend to dot the whole River Division with transfer plants. One will serve the purpose when taken in conjunction with Mr. Meister's plant in connection with the plant of the Carnegie Steel Company at Mingo Junction or the American Steel & Wire (692) Company or the National Tube Company traffic.

Q. If the facts are as Mr. Martin stated them, what was the purpose of including all of these points in order to compute or arrive at an average distance for your haul when by taking the two points from which facilities are presently available or are to be constructed you would have thrown the average distance into the next highest mileage block?

A. The purpose of taking all of the points shown in Exhibit No. 79 for arriving at the average was due to the fact that all of those points shown on Exhibit No. 79 appear as points of origin in Wheeling & Lake Erie Freight Tariff, 166 I. C. C. 1669.

[fol. 818] Q. And would it have been necessary to name all of the intermediate origin points?

A. I don't just understand the question. Do you mean intermediate points other than the ones appearing on this exhibit as points of origin?

Q. No.

A. You understand these points on Exhibit No. 79 are not intermediate points; they are points that are specifically named in the tariff.

Q. I understand that. But aren't they all intermediate as (693) between Martins Ferry and Steubenville?

Mr. Martin: I object to that question as irrelevant. The fact they might be intermediate to two extremes of the River Division would have no bearing upon whether they are intermediate between those points and the points of destination.

Examiner Curtis: I think what Mr. Orcutt has in mind is simply this, that having indicated that there are only two points at which you are going to take coal out of the river, Mingo Junction and Martins Ferry, and that being so, the distances ought to be computed from one or both or an average of both points to these destinations.

Mr. Martin: Of course, I would like to amplify my statement of a moment ago, as long as we are on this.

Mr. Orcutt: Just a moment, please. I am willing to withdraw my question in view of the embarrassment it apparently causes respondents.

[fol. 819] Mr. Martin: It causes no embarrassment to respondent at all. Nothing in this case causes any embarrassment to the respondent in this case. I want to make that clear on the record. But I just want to add the statement I made, to satisfy Mr. Orcutt, that this whole territory from Martins Ferry on the south to Steubenville on the north is industrial territory. It is possible that any one of these points may be utilized by industries at any time, and all of them are potential shipping points when transfer plants are erected or any (694) transfer equipment provided. That would not necessarily require the erection of a large transfer plant. Every one of these points is a place where we must take ex-river coal if it is offered to us.

Examiner Curtis: That was the Examiner's understanding—that the tariff was drawn so that that might be done.

(Narrative resumed.)

By Mr. Orcutt:

I am asked if it isn't true that by including all of these points at which no transfer plants are presently available or contemplated I have succeeded in reducing the average distance to 147 miles whereas if I had taken the actual points at which transfer plants are now available or contemplated I would have thrown the average mileage into the next highest mileage block. If that question is directed to Cleveland that is a fact. Also as to Lorain and to Canton.

[fol. 820] (696) It is a fact that if we used a mileage scale based upon five mile blocks and one block read 75 miles and not over 80 miles, or if we had another scale based upon ten mile blocks and one block read 70 miles and not over 80 miles, in scales like that the average mileage from the points on our River Division where there is presently a transfer plant, or one contemplated, would throw the average mileage we show into the next higher mileage block.

Those facts I have just stated as to Exhibit No. 79 would change somewhat any comparisons that were made of our average distance with rates under any mileage scale having blocks divided upon 70 or 80 miles or 150 miles.

Q. My question contemplated that by using any scale having mileage blocks at 80 miles or 150 miles.

A. Mileage blocks breaking at 80 miles or 150 miles?

Q. Yes.

A. Yes, it would.

Q. And many of the scales you have offered in comparison do so break, do they not?

A. I cannot make that statement. I would have to check back on my work sheets to see just how they break.

(Narrative resumed.)

The ore rates that I show on Exhibit No. 62 are applicable from Huron, Lorain, Cleveland, Toledo and Ashtabula Harbor and South Lorain. There is no ore producer in the territory contiguous to those origin points.

[fol. 821] As to the rates we have proposed on ex-river coal, I think there is coal that originates and is mined on our River Division.

(698) I am somewhat acquainted with the history of these (699) ore rates which I show. These ore rates were not accorded the full measure of advance under General Order No. 28. Under General Order No. 28 the rates from the lower Lake Erie ports were not advanced.

I don't know offhand what switching absorptions would be necessary for the Wabash Railway to pay on ore ex-lake at Chicago going to Granite City, Ill. I made the statement that the Commission in that particular case, 123 I. C. C. I believe it was, recognizes and specifically cites what the absorptions are. (700) I believe in that decision of the Commission they specify what the absorption is in connection with the various road haul lines.

In connection with this exhibit I gave the value of coal at the mine, the value of by-product coal at the mine compared with the value of ore at the lower Lake Erie ports. (701)

They are the actual value of the two commodities. My understanding is that in comparing low grade commodities that value is one of the necessary items to be taken into consideration.

I don't know if at the lower Erie ports there is ever any different value or ore, that is, ore that is consumed at the ports and ore that goes beyond to some interior point. (702) [fol. 822] I believe it is a fair comparison to take the value of ore after it has had all or a portion of its movement, and compare it with coal before it has had any movement.

These values on ore, that I stated, as explained by Mr. Martin, were the values at the lower Lake Erie ports. If I could have received information as to the value of ore at the mine I might have used that value. I could not receive any information as to the value of ore at the mine and apparently (703) all of the quotations on ore are made from the lower Lake Erie ports.

(704) The value I gave for by-product coal at the mine was $1.50 per net ton I believe. As to what mine that was, it was the mines in western Pennsylvania.

(705) My authority for that price is the Iron Age, published at Philadelphia, Pa., page 68 of the issue of July 2, 1931.

I might state in this publication on page 68 there is a quotation on mine coking coal f. o. b. western Pennsylvania mines of $1.50 and $1.60 per net ton. And the reason we used $1.50 per net ton was due to the fact we took these various publications over the last year and the average was $1.50.

The price given there for steam coal, mine run steam coal f. o. b. western Pennsylvania mines, $1.50 to $1.60. The same price as by-product coal.

I referred to the equipment which hauled this ore down to our River Division. I don't know the mechanical name of that equipment. I know they are open top cars. I believe they are gondolas.

[fol. 823] (706) The same cars that have this iron ore going down to the Steel mills can haul the coal back. That is my understanding of it.

By Examiner Curtis:

Coal most usually is in gondola drop bottom equipment, that is easily unloaded. Coal is usually handled in that class of equipment.

By Mr. Orcutt:

I am asked as to where I get my understanding, that they are the same. In preparing these data in connection with

these exhibits I conferred with my superiors and they gave me that understanding that the same cars that haul the iron ore down to the steel mills at Mingo Junction and other points on the River Division can be utilized for the return movement of coal.

(707) I don't know whether or not those cars could be utilized to haul back coal from the Ohio No. 8 District. As to whether I know any reason why they could not, one reason might be as to the unloading facilities at points of destination. The No. 8 coal loaded in the same car that ore is loaded in might be consigned to some commercial industry delivery at Cleveland that have perhaps an unloading pit and have to use dropbottom. I understand all of this coal that will move on the proposed ex-river rate will be unloaded at destination by a clam shell, I believe they term it.

I don't know everybody who is going to use this rate. As to how I know that they all have facilities to unload with a clam shell at destination, I know most of the industries that do require coal of this nature or type, and I believe that these industries take the coal out of the top of the cars instead of the bottom of the car.

[fol. 824] (708) As to who is going to use these rates to Cleveland, The Otis Steel Company, the Corrigan-McKinney Steel Company, the American Steel & Wire Company. That is all I can name offhand.

It is my presumption that the American Steel & Wire Company are going to use them. They have not told me that they were.

My answers are based upon the theory that we can unload a hopper car with a clam shell.

As to the distances I show in miles in my column No. 4, they are not the short line distances. They might be the rate making distances. They are the distances via which this traffic moves. From Huron, Ohio, I have used the distances over the Wheeling & Lake Erie or via the Wheeling & Lake Erie Railroad (709).

From Cleveland, Ohio, inasmuch as we have no facilities for unloading ore, I have used the distances of the Pennsylvania Railroad.

As to Toledo, Ohio, I have used the Pennsylvania Railroad. We have no facilities for unloading ore at Toledo.

I could not tell offhand the distances there that I think are rate making distances. I would have to sit down and

check it out. I don't know as a matter of fact that I have only shown one rate making distance on that exhibit and that is the rate from Ashtabula Harbor to Allequippa.

As to whether if I had used only making distances on that exhibit that our earnings per ton per mile in mills would have been an exceedingly different showing, that might be a fact. Nevertheless, the fact remains that this [fol. 825] particular ore hauled from Huron to stations on the Wheeling & Lake Erie moved via the distances shown on the Exhibit, and these earnings per ton mile are what the Wheeling & Lake Erie earned on the iron ore moving from Huron and South Lorain.

(710) Q. Take the distance from Toledo, Ohio, to Ironton and from Toledo to Portsmouth, 111.6 miles.

Mr. Martin: No; that is the rate.

By Mr. Orcutt:

Q. Take 259.3 and 232.3. Do I understand you to say that is the rate making distance?

A. No, sir. I did not make any statement of that sort.

Q. Why did you take the Pennsylvania Railroad distance, Mr. Adell?

A. Well, in connection with the two mileages which you mentioned that may be the rate making distance if I check it up.

Q. You don't think there is even the most remote possibility that it will be, do you?

A. I don't know. I will have to check it up.

(Narrative resumed.)

As to whether I possibly took those distances because I thought they had an ore unloading machine at Toledo. I knew it to be a fact that you had no unloading machine at Toledo.

I cannot tell you why I used those mileages. I think that it is a fair comparison where I have taken only one rate making distance and shown the ton mile earnings. My answer is yes.

[fol. 826] (711) By Mr. King:

I believe the local rate from the origin points shown on my Exhibit No. 67 to Huntington, W. Va., is $1.79 per net

ton. I believe that applies from the same group that this low 50 cent rate applies from. I did not find anywhere on the Chesapeake & Ohio or railroads in the vicinity of Huntington any other rate anywhere nearly as low as this 50 cent rate.

I am asked to refer to my Exhibit No. 70. I don't know what the Indiana rate from the nearest Indiana coal origin group to Indianapolis is. I can check it I presume, but I don't know.

I am asked to refer to my Exhibit No. 71.

Q. As to the anthracite coal that would move from either Benwood Junction or Junction Transfer, Pa., to the destinations (712) you have indicated where the Wheeling & Lake Erie received and delivered that tonnage the Wheeling & Lake Erie would have no obligation to furnish cars, would they? Those cars would come through from the mines, would they not?

A. I presume that is true.

Q. You would have absolutely no assembly cost?

A. At point of origin?

Q. At Junction Transfer.

A. That is right.

Q. It would come there loaded with cars which would be delivered in the ordinary delivery between the road taking [fol. 827] it from Junction Transfer and the road bringing it to Junction Transfer.

A. That is right.

(Narrative resumed.)

I would not know whether there would be no necessity of handling empty cars to accommodate such loads or setting out strings of empty cars for loading. That is, I would assumed there would be no necessity but whether there is actually a necessity or not I don't know. (713)

As to what happens, for instance at Kent, where we get it. There is a direct transfer with the Erie Railroad. We just pick up the loaded cars on the interchange tracks.

I am referred to rates on Exhibit No. 72 to Monesson, Pa., among other rates.

I couldn't say that that is the short line distance. But I will say that is the way we are handling the traffic from Huron to Monesson via Pittsburgh Junction and the Pittsburgh & West Virginia Railway Company. That route was

not in existence when these ore rates were made. This route was established, I believe, April 15, 1931, when the new Connellsville extension of the Pittsburgh & West Virginia was built. (714)

I am asked to refer to Exhibit No. 75. The origin points shown in the first division of page 1 are all of the points that are named in the tariff taking the 70-cent rate from zone 2. The same is true as to zone 3 on pages 1 and 2.

[fol. 828] I am asked to refer to Exhibit No. 78. That is not practically a copy of the Eldridge or the McElvany exhibits in the Conway case. I have a great many more commodities than he has.

By Mr. Fitzpatrick:

I am asked to refer to Exhibit No. 72. The rates I show from Huron to Canton and Massillon apply from Cleveland, Ohio to those destinations. It is true that the distance from Cleveland is considerably less than from Huron.

(715) I am asked to refer to Exhibit No. 71. I don't know anything about the rate structure as it applies to anthracite coal from eastern Pennsylvania to points in Ohio.

I am asked if I happen to know the through rates over the Pennsylvania Railroad from the anthracite fields to points in Ohio, to some of the destinations that are shown in Exhibit No. 71.

The Pennsylvania Railroad might publish through rates from the eastern Pennsylvania fields to some of the points shown on the exhibit. But the fact remains that these particular rates we have shown on this page 1 of Exhibit No. 71 are published in a tariff of the Baltimore & Ohio Railroad naming rates on anthracite coal from Benwood, W. Va., and Junction Transfer, Pa., when originating in the State of Pennsylvania.

It might be a fact that what I refer to as the rate is nothing more nor less than a factor which as to the junction transfer route is necessary to produce the equivalent of the joint through rates that are effective over other routes from origin points in eastern Pennsylvania, to Ohio destinations. But, as I just explained, these rates are published from Benwood and Junction Transfer apparently (716) as [fol. 829] proportional rates on traffic originating beyond.

As to whether I put in this factor without reference to the through rates from origin to destination over the same routes, there is nothing in the Baltimore & Ohio tariff naming the rates to these two points that shows this is a division or factor of a through rate from eastern Pennsylvania.

I am asked to refer to Exhibit No. 73, where I show a rate on fluxing stone from Fairport Harbor to Canton and Massillon, Ohio. I believe I testified that that rate was prescribed by the Ohio Commission. Yes, I stated the rates shown on this exhibit, that is Exhibit No. 73, from Fairport Harbor to Canton and Massillon are rates prescribed by the Public Utilities Commission of Ohio.

I am asked to refer to Exhibit No. 76. It is my understanding that the scales of rates prescribed by the Interstate Commerce Commission in the proceedings that are referred to in that exhibit were prescribed as maximum reasonable rates. (717)

As to the sand and gravel scale prescribed by the Commission in the Southeast, 122 I. C. C. 133, I don't know the extent to which intrastate rates within the South were before the Commission in that proceeding.

As to whether I know as a matter of fact that the Commission in that proceeding issued an order directing the carriers to increase intrastate rates in the State of Georgia, to the scale prescribed by the Interstate Commerce Commission for interstate application, I don't know that without reading the decision again.

[fol. 830] As to how I happen to conclude that the Commission was prescribing merely maximum reasonable rates, on page 165 of the report of the Commission in 122 I. C. C. 133, the Commission states as follows:

"We find that the rates maintained on sand, gravel (washed or unwashed) and clay gravel, in straight or mixed carloads, by defendants in No. 17799 from Montgomery, Ala., and by defendants in No. 17764 (Sub-No. 1) from Chattanooga, Tenn., and by defendants in No. 17763 from Montgomery and Chattanooga."

The sum and substance on the next page, page 166, "the rates (718) for the future will be unreasonable to the extent that they exceed or may exceed, rates set forth in the following tables, subject to a minimum weight of 90 per cent of the marked capacity of the car, except that when car

is loaded to full visible capacity actually weight shall govern." "Except that when car is loaded to full visible capacity actual weight shall govern:

"Table A. Distance scales for interstate application are over standard or trunk line. Rates are in cents per net ton as follows." Then the scale is quoted.

There were various sub-numbers to the report. If the Commission in this particular case ordered the (719) intrastate rates to be increased, naturally it is to be assumed that as to intrastate rates in Georgia it would not be a maximum scale. It would be a maximum and a minimum scale.

[fol. 831] Referring to the decision in the Southwest, 155 I. C. C. 247, I did not know as a matter of fact that there was a later report rendered in that proceeding in which the Interstate Commerce Commission required that the Louisiana intrastate rates be increased to the scale to which I refer to in my exhibit. If that were done, I would also understand that the Interstate Commerce Commission then regarded the southwestern scale as a minimum and a maximum reasonable scale, in western Louisiana.

I referred to rates prescribed by the Interstate Commerce Commission on sand and gravel between points (720) in Pennsylvania, Ohio and West Virginia. In that proceeding the Commission dealt also with joint rates. With certain reservations the Commission might have prescribed 20 cents over the scale but the carriers in order to meet the competition to key points naturally could not put in a rate and add 20 cents for a joint line haul.

I am not familiar with the basis of rates on crushed stone, sand and gravel between points on the Pittsburgh & Lake Erie on the one hand, and the Baltimore & Ohio, or Pennsylvania on the other in that territory. When it is necessary in order to arrive at a rate from and to a given point to use two or more carriers 20 cents should be added to the single line rate.

I am asked to refer to Exhibit No. 77.

[fol. 832] (721) I am familiar with the report of the Ohio Commission in case No. 2307 in which the Ohio Commission considered rates on road building material in 1921.

It is a fact that in that proceeding the decision in which was rendered shortly after the 40 per cent increase the Ohio Commission required the carriers to strike down the entire increase of 40 per cent as it applied to road-building

materials, including sand, gravel and crushed stone, so that in order to provide revenue on that traffic intrastate within Ohio it would be necessary to increase them now 26 per cent in order to arrive at figures which would be comparable with rates that have had the 40 per cent increase and the 10 per cent reduction.

I am asked to refer to Exhibit No. 78: (722) Where I show revenue in connection with scales of rates on lime in two instances, and as to why I did not take the average loading of lime as shown in the Commission's report in those cases, the cases in which the rates were prescribed, I was under the impression that the Commission did not prescribe or mention average loading on lime, and I believe I used that lower agricultural and fluxing lime.

I am referred to page 23 of the Commission's report wherein the Commission stated average loadings ranging from 45,000 to 57,000 pounds are shown by various parties in various exhibits.

[fol. 833] By Mr. King:

I am referred to my Exhibit No. 76. The scales that I refer to in the column rate in cents per net ton are found in these decisions that I note at the bottom, in each instance (723) and they extend beyond the 147 and 149 miles. I used the block representing our average distances. They go for longer distances, however. Most of them are stated in cents per ton, I think, and they will run from five miles, perhaps, to 300 or 400 or 500 or 600 miles.

Redirect-examination.

By Mr. Martin:

I was questioned as to the use in my exhibits of stations on the river division other than Martins Ferry and Mingo Junction. It is a fact if any coal were offered at any station named in the tariff we would be obliged to accept it and transport it, if it were ex-Ohio River coal. I would therefore not consider it proper in preparing rate comparisons to strike out and disregard all of the origin stations named other than Martins Ferry and Mingo Junction. (724)

I was also asked concerning the mileages from these River Division points. I have made calculations as to the short line mileages from Wheeling & Lake Erie River Divis-

ion points or the approximate short line mileages therefrom.

From studies I made in connection with short line mileages I found the average distance from River Division points on the Pennsylvania Railroad are as follows:

[fol. 834] To Cleveland, 124 miles. If we should use the distance of the Pennsylvania Bedford-Wheeling & Lake Erie line it would reduce that mileage to 122.28.

To Canton, average distance 75.88 miles.

To Massillon, average distance, 84.08 miles.

I have also made a check as to the mileages used in Docket No. 17000, Part 6, Rate Structure Investigation of iron and steel articles in Eastern territory, I believe it is, or Official Classification territory, and find that the mileage used, that is, the average mileage used from the River Division points to (725) Lorain is 142.02 miles, to Canton 72.45 miles, to Massillon, 77.2 miles, but in all my exhibits I have used the actual average mileage from all these River Division stations via the Wheeling & Lake Erie direct, although in all cases it is longer than the short line mileage.

I was asked concerning the matter of the value of by-product coal at the mine as compared with the value of ore at the lake front and again as to the value of by-product coal at Mingo Junction as compared with the value of ore at the lake front.

If I were to take the value of $1.50 per ton for coal at mine and add to it the water haul and lifting charges at Martins Ferry, we will say at Martins Ferry, to make it as large as possible, $1.50 plus the 52 cents water haul at Martins Ferry would be $2.02 and adding a lifting charge of 12 cents to put it into the car would give $2.14.

[fol. 835] (726) I believe I stated the value of ore at the lower lake port was from $4.40 per gross ton, to $4.80 per gross ton. Our coal is on a net ton basis, but nevertheless the value of the coal delivered in the cars at Martins Ferry would be approximately half of the value of the ore at the lake front, even allowing for the difference in gross and net tons.

I believe that the Wabash has switching to pay at Granite City for the movement of ore which they must absorb.

(727) The Witness: On page 508 of the report of the Commission in Ex-Lake Iron Ore from Chicago to Granite City, Ill., 123 I. C. C. 503, the Commission states as follows:

"Switching absorptions at Granite City, as shown at page 79 of the original report, amounts to 87 cents per car in the case of the Illinois Central and $5 and $5.60 per car respectively for the Wabash and the Chicago & Eastern Illinois."

By Mr. Martin:

I have never heard of any proposal of the carriers to increase those ore rates during the last ten years.

They are used generally for the movement of very large tonnages of ore.

I was asked by Mr. King as to whether my anthracite coal exhibit included any assembly costs, such as providing empty cars, setting in the empties at the mines, gathering the loads and assembling the cars previous to road haul, and I stated that that anthracite exhibit or the rates shown thereby did not include such assembly costs. As to my Exhibit No. 67, the rate from the Logan district includes all [fol. 836] of these assembly costs and services.

(728) As to my Exhibit No. 69, the rate from the Meyersdale district of the Baltimore & Ohio to Glenwood, covers all of those assembly services.

The rates at the lower part of my Exhibit No. 70 from the southern Illinois group, from Danville, Ind., group, the Brazil-Clinton and Linton-Sullivan group to East St. Louis and Chicago, respectively include those assembly services.

Recross-examination.

By Mr. Orcutt:

I am asked whether I know it to be a fact that the Commission has never used class rate mileages in determining the level of coal rates, prior to Docket 17000, part 6 class rates were built up on the so-called Disque scale. Since Docket 17000 Part 6 a new basis for figuring (729) class rates has been put into effect, if I recall correctly. The basis formerly used is the shortest distance that can be computed without transfer of l-ading.

It is not my impression that the rates established in Docket 17000, Part 6 were class rates. I am wrong there. I said Docket 17000 Part 6 covers iron and steel rates. But the same formula was used in your eastern class rate investigation. I will correct myself there.

I can not indicate any coal rates that the Commission has fixed, using class rate mileages.

[fol. 837] I will not admit it is a fact that the Commission has never used class rate mileages to fix coal rates or determine their relationship. I would have to go into reports covering all of the coal rates fixed by the Commission. I can not in any instance name- there they ever have.

Examiner Curtis: Well, as a matter of fact, in the Eastern territory, as far as the Examiner is informed, no; but we did have the Holmes and Hallowell scale and certain scales established after that scale was established in the Middle West, based largely upon mileage. The Holmes and Hallowell scale is a mileage scale.

(730) Mr. Orcutt: Yes, it was a mileage scale, but it was not fixed based upon class rate mileages.

Examiner Curtis: No.

Mr. Orcutt: That was my question.

Examiner Curtis: Neither was the sand and gravel case, as a matter of fact. That was fixed on special scales.

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(731) GEORGE DURHAM was recalled as a witness and, having been duly sworn testified further as follows:

Cross-examination.

By Mr. King:

My map Exhibit No. 2 represents only those mines in the Pittsburgh and Connellsville districts which are located on the river and have tipples equipped for loading direct into barges.

[fol. 838] I did not attempt to show between Steubenville and Martins Ferry whether there were coal mines in there. It is a fact that there are some coal mines along the river there.

As to how far along the river that coal area extends, it goes down past Moundsville on both sides of the river and up to around Steubenville. I am not positive, but it may extend a little above Steubenville. Above that I do not understand the coal amounts to anything. My recollection is that it is the No. 8 seam and it is all steam coal. I am quite positive that is a fact. I think there are some (732) openings. There is one opening on the West Virginia side very

near to Terminal Junction. There is another one at Moundsville, I think.

On my Exhibit No. 3 I did not observe that particular at the time that in the later years shown the increase made by Fairmont was at the expense of the Crescent districts; in other words, that Fairmont's gain was approximately the loss of the Crescent districts. I will take a look at it.

A. Mr. King, as I understand you, you call attention to the difference between the total amount of coal shipped from all other Crescent districts for the year 1926 which is 4,596,780 tons.

Q. Yes.

A. That is right, isn't it?

Q. Yes.

A. That is, in 1926.

Q. Yes.

(733) A. And the amount shipped from the same districts to these four destinations, that is, Canton, Cleveland, Lorain and Massillon, during the year 1930, which is [fol. 839] 2,487,710.

Q. As a matter of fact, I was using all Crescent districts, which is the next lower column, where you had 8,000,000 in 1926 roughly and 7,000,000 in 1930 and as Fairmont I used the figures of 427,994 which is 1926, and 1,236,400. The gain of Fairmont, as I figure it here, is approximately 800,000 and the loss of all Crescents is approximately 900,000. It is just a matter of mathematics, I think, from the exhibit. That wasn't one of the things you called attention to, was it?

A. No, I did not call attention to that.

Q. But it does show it to be a fact that the Crescents' loss and Fairmont's gain are approximately the same amounts?

A. Yes.

Q. As to your Exhibit No. 8, am I correctly informed that there is an arrangement now authorized whereby the Wheeling & Lake Erie will engage in the transportation of coal from the Fairmont district from mines on the Western Maryland or served by the Western Maryland?

A. There is a proposition in process of negotiation for some commercial rates from the Fairmont district via the Western Maryland. I am not sure that it has been completed.

By Examiner Curtis:

Q. How would that coal move?

(734) A. Over the Pittsburgh & West Virginia, the Connellsville extension of the Pittsburgh & West Virginia.

Q. It would first move down over the Monongahela Railroad, would it not?

[fol. 840] A. No, sir; Western Maryland. The Western Maryland has a trackage right and it goes down into the Fairmont district. It has a trackage right over the Baltimore & Ohio. That is my recollection.

Q. From what point?

A. I don't remember that. I don't remember the point at this moment. I cannot recall it.

(Narrative resumed.)

The Western Maryland has a line extending from Cumberland up to Connellsville and connects with the Pittsburgh & Lake Erie and takes it into Pittsburgh. It also connects with the Pittsburgh & West Virginia-Connellsville extension, at Connellsville. There is a new line that was built from Pittsburgh through to Connellsville, completed last spring, sometime in April or May.

(735) I think the only way that the Western Maryland gets into the Fairmont district is a trackage right over the Baltimore & Ohio. If they get in there in any other way I am not informed just at the moment. That is, I cannot recall any other way in which they get in there.

By Mr. King:

I am asked to refer to Exhibit No. 9. This Exhibit was not prepared by me personally. It was prepared under my direction.

As to whether I had available or considered in making the through mileage on which the tariff rate actually applied, and the other carrier mileage as compared with the Wheeling & Lake Erie's mileage, I hardly think we had that mileage. It might have been possible for us to have gotten it. I think it would.

[fol. 841] At any rate I did not go into that. The purpose of the exhibit was to show the size of the division received by the Wheeling & Lake Erie and the volume of the traffic moving. 736)

I will be glad to answer any question as to the service performed by the Wheeling & Lake Erie if the division becomes a question of reasonableness.

(737) I made some investigation to ascertain in advance of the filing of these rates what transfer facilities were available along the river.

The two I found were the Carnegie Steel Plant at Mingo Junction, Ohio and the Belmont Supply Company at Martins Ferry, Ohio.

There is one at Steubenville, but I am not prepared to say that it is available to the public. It belongs to the Wheeling Steel Corporation.

Distinguishing between the Wheeling Steel Corporation and the Carnegie Steel Company, The Wheeling Steel Corporation would have no occasion to use it for their own purposes for the transportation of ex-river coal. The Carnegie Steel Company, being a subsidiary of the United States Steel Corporation along with the American Steel & Wire Company and the National Tube Company, the former being located at Cleveland and the latter at Lorain, this plant of the Carnegie Steel Company at Mingo Junction could be used for the corporation's coal, and I am advised that they will use it.

[fol. 842] (738) And physically speaking, the plant at Steubenville could also be used for transferring. I failed to talk about it because I was not prepared to say that it was open to the public.

They could also be served by our tracks. We have a direct connection.

J. A. Coakley, Vice President of the American Steel & Wire Company and also J. M. Morris, Traffic Manager of the National Tube Company advised me that the United States Steel people would use the Carnegie hoist to serve their Cleveland and South Lorain plants.

(Thereupon an adjournment was taken until Thursday, September 17, 1931.)

[fol. 843] (Met at 10 a. m., pursuant to adjournment, Thursday, September 17, 1931.)

(739) GEORGE DURHAM, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct examination (continued).

Mr. Martin: Mr. Examiner, yesterday Exhibit No. 69 was commented upon by Mr. Adell as to the movement from certain mines under the rate of the Baltimore & Ohio Railroad Company to Glenwood, Pennsylvania, shown on the exhibit. The exhibit was received without objection and the comment which Mr. Adell proposed to make related to matter of actual movement and was to have been used by us or by him to show that the earnings actually developed under the actual movements were somewhat different from the earnings shown on all points in the group on the exhibit. At that time Mr. Fitzpatrick volunteered to stipulate that there was a (740) substantial movement under that rate from the group, as a whole. We have given further consideration to the matter and are willing to close that particular issue by accepting his stipulation on the record if he will make it at this time.

Mr. Fitzpatrick: The Baltimore & Ohio is willing to concede that there is a considerable movement of traffic to Glenwood on the group rates shown in Exhibit 69. I understand that is the stipulation that Mr. Martin is interested in having us make.

[fol. 844] Mr. Martin: That is satisfactory to me Mr. Examiner.

Mr. Examiner, it will be recalled that objections were made to the receipt in evidence of a letter dated July 8, 1931 from Colonel Jarvis J. Bain, District Engineer of the Pittsburgh Engineer District to the Wheeling & Lake Erie Railway Company, relating to certain expenditures by the Government for the improvement, maintenance and operation of locks and dams on the Monongahela, Allegheny and Ohio Rivers, and that we reserved the right at that time to place in the record other evidence concerning that matter.

Mr. Durham is now on the stand and I shall ask that he be considered as recalled for further direct examination for the purpose of showing that information in a somewhat different way, or, at least, supplementing the information that we have in the record on that point. Is that satisfactory?

Examiner Curtis: Yes.

(741) By Mr. Martin:

I have stated that prior to July 1, 1930, the Pittsburgh Engineer District included the navigable portions of the

Allegheny and Monongahela Rivers and a portion of the Ohio River down to Beech Bottom, W. Va.

The District Engineer of that District on July 8, 1931 was Lt. Col. Jarvis J. Bain, Corps of Engineers. I became acquainted with him when I called upon him on that day. I called upon Colonel Bain to secure information as to the cost of construction, maintenance and improvements made by the Government on the Allegheny, Monongahela and [fol. 845] Upper Ohio Rivers included within the Pittsburgh Engineer District and information as to the traffic on those rivers. He gave me access to public records in his office which consisted of published reports of the Chief of Engineers of the United States Army and official statistics on file in his office relating to shipments on the Monongahela, Allegheny and Ohio Rivers.

(742) I requested that he furnish me with official Government publications from the supply from his files. As a result of that request he furnished me a copy each of the following:

"Report upon the improvement of Rivers and Harbors in the Pittsburgh, Pennsylvania District," being an extract from the Annual Report of the Chief of Engineers, 1930, issued by the Office of the Chief of Engineers, 1930.

"Report upon the Improvement of the Ohio River," being an extract from the Annual Report of the Chief of Engineers, 1930, issued by the Office of the Chief of Engineers in that year.

There is offered as the next exhibit a copy of the first of two pamphlets referred to by Mr. Durham entitled "Report upon the Improvement of Rivers and Harbors in the Pittsburgh, Pennsylvania District, Extract from the Annual Report of the Chief of Engineers, 1930" as Exhibit No. 81.

(743) (Respondents' Exhibit No. 81, Witness Durham, received in evidence.)

There is offered for the record a copy of the second pamphlet referred to by Mr. Durham entitled "Report upon the Improvement of the Ohio River, Extract from the [fol. 846] Annual Report of the Chief of Engineers, 1930,"

(Respondents' Exhibit No. 82, Witness Durham, received in evidence.)

On page 1320 of Exhibit No. 82 the net total expenditure of the United States Government as of June 30, 1930, for

the construction of locks and dams in the Ohio River, is stated to be $116,191,970.62.

On page 1325 of Exhibit 82 the net total expenditure of the (744) United States Government as of June 30, 1930, for operating and care of locks and dams in the Ohio River, is stated to be $24,676,451.64.

On page 1329 of Exhibit No. 82 the net total expenditure of the United States Government as of June 30, 1930, for open channel work on the Ohio River, is stated to be $16,365,144.87.

On page 1331 of Exhibit 82 the net total expenditures of the United States Government as of June 30, 1930, for operating snag boats on the Ohio River below the Pennsylvania State line, is stated to be $1,461,548.78.

The total of these four figures is $158,695,115.91.

On page 1336 of Exhibit No. 81 the net total expenditures of the United States Government as of June 30, 1930, for the cost of improvements on the Monongahela River, is stated to be $13,327,918.85.

On page 1339 of Exhibit No. 81 the net total expenditures of the United States Government as of June 30, 1930, for operating and care of locks and dams on the Monongahela River, is stated to be $17,386,406.34.

The sum of these two figures is $30,714,325.19.

[fol. 847] On page 1341 of Exhibit No. 81 the net total expenditures of the United States Government as of June 30, 1930, for open channel work on the Allegeheny River is stated to be $323,492.80.

On page 1347 of Exhibit No. 81 the net total of expenditures of the United States Government as of June 30, 1930, for the construction of locks and dams on the Allegheny River, is stated to be $8,552,902.16.

On page 1348 of Exhibit No. 81 the net total expenditures of the United States Government as of June 30, 1930, for operating and care of locks and dams on the Allegheny River, is stated to be $2,460,022.53.

The total of these three figures is $11,336,417.49.

(746) The grand total of all of the various expenditures to which I have just testified is $200,745,858.59.

At the time Colonel Bain furnished me with these reports, Exhibit No. 81 and Exhibit No. 82, he also furnished me with a letter summarizing the information shown therein relating to the expenditures of the Government for the con-

struction of locks and dams, the operation and care of locks and dams, open channel work, and operating snag boats on the Ohio, Monongahela and Allegheny Rivers which I have just read into the record and containing other information.

I am handed what purports to be the original of a letter addressed to the Wheeling & Lake Erie Railroad Company dated July 8, 1931, purporting to be signed by Jarvis B. Bain, Lt. Col. Corps of Engineers, District Engineer. That is the letter to which I refer.

[fol. 848] The letter is dated July 8, 1931, War Department, United States Engineer Office, Pittsburgh, Pennsylvania and is addressed to The Wheeling and Lake Erie Railway Company, Cleveland, Ohio, and is as follows:

"Gentlemen: The following information is furnished in (747) response to your request:

"1. Total expenditures by the Government for improvement and maintenance of the Ohio, Monongahela and Allegheny Rivers in the Pittsburgh Engineer District to June 30, 1931, obtained from the official records of this office (including expenditures for the fiscal year ending June 30, 1931, not yet published). The portion of the Ohio River in the Pittsburgh District extends to Dam No. 13.

	Improvement	Maintenance	Total
Monongahela River	$13,666,908.35	$18,287,800.74	$31,954,709.09
Ohio River	18,551,011.57	9,710,312.03	28,261,323.60
Allegheny River	9,868,695.56	2,983,499.52	12,852,195.08
Total	$42,086,615.48	$30,981,612.29	$73,068,227.77

"2. Total net expenditures by the Government for the entire Ohio River, the Monongahela and the Allegheny to June 30, 1930, obtained from the Annual Report of the Chief of Engineers, U. S. Army for the fiscal year 1930, two extract pamphlet copies of which are enclosed herewith, to which the page numbers in the following table refer.

[fol. 849] "Ohio River:

Construction of Locks and dams, net total expenditures (p. 1320)	$116,191,970.62
Operating and care of locks and dams, net total expenditures (p. 1325)	24,676,451.64
Open Channel work, net total expenditures (p. 1329)	16,365,144.87

(748) Operating snag boats, net total expenditures (p. 1331)	1,461,548.78
Total	$158,695,115.91
"Monongahela River:	
Improvement, net total expenditures (p. 1336)	$ 13,327,918.85
Operating and care of locks and dams, net total expenditures (p. 1339)	17,386,406.34
Total	$ 30,714,325.19
"Allegheny River:	
Open Channel Work, net total expenditures (p. 1341)	$323,492.80
Construction of locks and dams, net total expenditures (p. 1347)	8,552,902.16
Operating and care of locks and dams, net total expenditure (p. 1348)	2,460,022.53
Total	$ 11,336,417.49

Very respectfully, (Signed) Jarvis J. Bain., Lt. [fol. 850] Col. Corps of Engineers, District Engineer.

"2 inclosures—
Pamphlet copies, Annual Report, C. of E. 1930."

The figures shown in the second section of that letter correspond with the figures which I have read into the record from exhibits Nos. 81 and 82. (749)

I am asked to refer to my Exhibit No. 15 in this proceeding. Under the ruling of the Examiner the figures for the year 1931 were eliminated from the exhibit. I have prepared a revised exhibit to show the cost of maintenance of the Monongahela and Allegheny Rivers by years for the five year period 1926 to 1930, both inclusive.

(Copy of that revised exhibit is offered for the record.)

(Respondents' Exhibit No. 15-A, Witness Durham, received in evidence.)

The authorities for the expenditures for maintenance of the Monongahela and Allegheny Rivers for those five years are shown at the bottom of the exhibit.

(750) Cross-examination (continued).

By Mr. Orcutt:

The total freight operating expenses of our company for 1930 were $11,396,737.00.

Before issuing the tariff which is here under suspension, I made some investigation of navigation on the Ohio, Monongahela and Allegheny Rivers. I made inquiry as to the navigable portions of the Ohio and the Monongahela and [fol. 851] Allegheny Rivers, about our river division, especially, and I also made some rather general inquiry as to the Ohio River below our River Division points and also some general inquiry with respect to the Kanawha River, not to the extent, however, that I went into the matter with respect to the Allegheny and the Monongahela Rivers.

The Ohio River is navigable from our river junction clear to the Mississippi River. There is navigable water, if that is what you mean, clear to New Orleans. That is undoubtedly true.

(751) I do not show any dams below McMechem on my Exhibit No. 2. That was merely because I was not interested in the dams, and not because there was none existing below that point.

I found in a general way, that the Kanawha River is navigable according to my recollection for shallow draft craft for a considerable distance. It runs in my mind that it was about 80 miles to 90 miles. I hope that will not be considered as a definite answer but say 75 to 80 miles or in that vicinity.

There are dams in the Kanawha River, but I can not tell you the dimensions of them, and the Government has spent much money on the Kanawha River for navigation. In connection with that, it is fair to say that my inquiry developed general information which would lead me to believe that the cost of towing up the river is somewhat in excess, probably 25 per cent in excess, of the cost of towing down the river. I can not substantiate that by definite statement from any responsible towing outfit and I have gotten this from my conversation with people who seemed [fol. 852] (752) to be informed on matters of that kind.

(Mr. Orcutt asked to have the witness' statement stricken from the record as to the percentage of cost of upstream towing over the downstream towing.)

(After discussion the examiner ruled as follows.)

Examiner Curtis: With that appearing clearly upon the record, that, in large degree, if not entirely, the information as to (753) the navigability of these streams was obtained from inquiry, I am inclined to leave the testimony stand for what it is worth.

Mr. Orcutt: Please note an exception and I wish to call the Examiner's attention to the fact that my inquiry did not go to any costs on the Ohio River at all. It merely went to the navigability of the stream.

Examiner Curtis: The Examiner so understands and the exception may be noted.

By Mr. Orcutt:

Q. In your direct testimony I was not quite clear as to your theory under which you felt justified in publishing the rate of a dollar and 10 cents from Mingo to Cleveland as against the all-rail rate of the carriers from the Pittsburgh, Connellsville and Fairmont District. I believe I understand your theory of costs. I believe I understand your theory of the river being available to everybody. It is merely the level of the rates. I believe you said something about your having published a rate 15 cents lower than the all-rail rate. Would you mind explaining that theory to me again?

[fol. 853] A. The 15-cent difference applied to the rate which would probably be published by the Pennsylvania and/or the New York Central from Colona and Conway to Cleveland—assuming that, for illustration, in the case of the Connellsville rate, the 77-cent rate provided for from Colona and Conway to (754) Youngstown, was extended to Cleveland by applying to it the present 48-cent differential in the all-rail rate, if such a rate should be published it would be necessary, if we were to compete with that successfully to have a lower rate from Mingo Junction to Cleveland and when I say lower rate I mean a lower all-rail rate. Otherwise, no traffic would probably come to us because of the extra cost of river transportation from Colona and Conway to Mingo.

Examiner Curtis: Let me get this clear in my mind. You are speaking about the extra cost from Colona and Conway to Mingo. What I seem to have in mind is that coal that

comes off the Monongahela Railway moving to Mingo will move to the Junction of the Allegheny and Monongahela Rivers to Pittsburgh and then go down the river to Mingo Junction, whereas coal from mines on the Monongahela River destined to Conway and Colona will, likewise, move down the Monongahela River to the junction of that river and the Allegheny, forming the Ohio River at Pittsburgh, and then move up the Allegheny River to Conway. Am I correct about that?

The Witness: No, that is not correct.

Examiner Curtis: Then Colona and Conway are farther up the Ohio River than is Mingo?

[fol. 854] The Witness: Approximately 50 miles.

Examiner Curtis: In other words, it would turn down the river but it would proceed on down to Mingo from Conway and Colona. (755)

The Witness: Coal moving from the Monongahela River to Mingo would pass along the River by Conway and Colona and go 50 miles farther down the River.

Examiner Curtis: And also pass Smith's Ferry.

The Witness: That is correct.

Examiner Curtis: Then I am glad that I have got the confusion out of my mind because it has been some time since I dealt with a Colona and Conway case.

Mr. Orcutt: If the Examiner would care to glance at Exhibit No. 2 of respondents (handing map to the Examiner).

Examiner Curtis: The Examiner sees that he was in error.

(Narrative resumed.)

By Mr. Orcutt:

That rate of $1.10 which we published in the suspended tariff from Mingo Junction to Cleveland was arrived at prior to the cost study we offered in evidence. I would like to supplement that by saying we prepared a cost study for our own information, so that we would know about what it cost us to do the job, so far as our part of it was concerned.

I think our cost in the record is very close to the cost we had estimated originally. (756) I don't remember exactly what it was.

[fol. 855] I could not give it to you. I do not have it.

Mr. Martin: I can give that to you Mr. Durham.

By Mr. Orcutt:

Q. Do you have it now?

A. I have the figure here which I can use to get approximately the cost we estimated. We estimated our cost of transporting coal to Cleveland, our preliminary estimate, at 71.3 cents, approximately.

(Narrative resumed.)

I said 71.3 cents, for our total operating cost. I get 71.3 cents by deducting the 20 cents switching charge which I included for Cleveland.

Q. Your theory, then, as I understand it, was that you had to put in the lowest rate you could possibly justify, and that rate, in order to get you any of the business, would have to be 15 cents lower than the river-rail rate from these same mines to Cleveland via Conway or Colona.

A. Well, I would like to add to that by saying that certainly we could not possibly expect to move ex-river business from our river division stations at the same rate that might apply from Conway and Colona to these four destinations via the (757) New York Central or the Pennsylvania for the reason that there is an additional river transportation cost.

Our conclusion is that that difference is 15 cents. That conclusion is based on the best information we have been [fol. 856] able to obtain and we have, I think, checked it as closely as the situation with respect to river transportation rates will admit.

(Narrative resumed.)

I did not have a quotation of 38 cents at the time I made the rate, nor at the time of the hearing before the Suspension Board. I had no quotation.

By Examiner Curtis:

It is quite true that we would haul this coal a little further to get it to Cleveland than would the Pennsylvania or the Pittsburgh & Lake Erie from Colona and Conway to Cleveland.

That is true that our operating condition is probably a little more difficult than around on those two lines of rail-

way from point of grades and curvature and ability to haul heavy trains and that is all included in our cost study. That has been given full consideration in our cost study.

By Mr. Orcutt:

I am asked if I had no quotation less than 45 (758) cents where did I get the figure of 43 cents that I included in my reply to the Suspension Board. That was just hearsay, Mr. Orcutt; the kind that you say is not good. That was the information I put in that statement. I had a lot of hearsay information. It did not include the cost of transfer.

I say in my reply in referring to the rate: "This is produced by an ex-river rate of $1.10 and an estimated cost of 43 cents per ton to cover the movement of the coal via [fol. 857] the river and the transfer from barge to car." It did not include it because I certainly knew there was 12 cents estimated cost.

I wrote this to the Commission and signed it. As to whether that was the best information I had when I made the rate, I did not want to use any other figures because I wanted to be conservative.

(759) If you make that kind of a calculation it is true that deducting the 12 cents transfer charge from 43 cents leaves 31 cents as the river cost. I did not have any figures that I thought were reliable when I made the rate.

As to whether I think as far as rate making is concerned, it is more conservative to use 45 cents than 31 cents, since getting a definite quotation on the matter I think it is more representative of the actual facts of what it will cost on the river. Yes, I think it is conservative, because I now have more information than I had at that time; more definite information. I have written information from a reliable transportation company.

If I was convinced that the transportation via the river could be made from Pool Six to Mingo for 30 cents a ton, that would change my view of what the level of the rate should be from Mingo to Cleveland.

Q. Would you think that the rate from Mingo to Cleveland should be increased by the amount you were convinced the river cost could be decreased below 45 cents.

A. I think I would want to know all of the facts in connection (760) with it. I think it is fair to say that if it is a [fol. 858] fact that the river transportation can be obtained

by any shipper who ships a considerable quantity of coal, I would say quantities around 250,000 to 500,000 tons; if he can obtain a rate of 30 cents and that can be relied upon, then I think a higher rate from Mingo to Cleveland and these other points would be justified.

(Narrative resumed.)

I would want to know all the facts and want to be absolutely certain of it. As to why I didn't feel that way when I made the rate in the first place, and why I didn't want to know all the fact first to be absolutely certain of those facts before I first made the rate of $1.10, as we go along we learn. We get more facts as we proceed.

By Examiner Curtis:

It is true that there was some stress in making the situation before the Suspension Board and many of our facts were collected hurriedly.

(761) By Mr. Orcutt:

Q. You had a rate of 31 cents for the river cost. You now have a rate of 45 cents. That is 14 cents more. We will say under your theory you reduce the $1.10 rate by 15 cents in view of your better information.

A. I do not think it amounts to that. I do not think we should put any lower rate in than is necessary to move the traffic and I think this rate, any higher rate than we have put in there, will prevent our moving traffic, particularly from the Monongahela and Allegheny Rivers.

[fol. 859] Q. You know, don't you, as a matter of fact, that traffic is moving on those rivers for a similar distance today for nearer 30 cents a ton than 45 cents?

A. No, I do not have knowledge of that. I will say further that I do not believe that it is moving where the quantities are in moderate volume, that is down to 250,000 tons, from (762) the best information I have been able to obtain from inquiries. It may be moving at a lower rate than that and lower because they have that in a large volume to individual companies, and there may be rates where the shippers or the receivers furnish barges and the towing rate may be lower.

Q. Or, for instance, instances such as the steel corporation where they own the boat and the barges, the mine, and the transfer machine and everything?

A. I think they can move it for less than 45 cents a ton.

Q. Much less?

A. I think they can move it for less than 45 cents a ton. I don't know how much less. I am interested in providing a rate which will enable all the receivers of coal at these destinations to have the benefit of the river and not a special rate for the corporations.

Q. You are not interested in whether or not the corporation is favored as against other shippers by means of the fact that one arm of its organization owns the boats and the tows and the transfer machine, and another branch [fol. 860] of its organization owns the mine, and another branch of its organization owns the industry ultimately consuming the coal?

A. I do not think that should be used to prevent the other receivers of coal at these destinations from having the benefit of the river transportation.

Q. So your theory, in the last analysis, as I get it, is that in (763) this particular instance you are justified in making whatever rate is necessary to get the business provided you do not go below your estimated cost of service?

A. That is not correct. You have the wrong understanding.

Q. Please correct me.

A. I will make the statement definitely this way:

I want to make the highest rate that it is possible for me to have to participate in the business if that rate is compensatory.

Q. Reversing the operation, what basis of rates, bearing in mind that there is not today any rate from Colona and Conway to Cleveland on ex-river coal, should be employed in making ex-river rates on coal to Cleveland via Conway and Colona when that coal comes off the Kanawha or Ohio River below Mingo Junction?

A. I would say that such rates as might be established for the movement of any coal coming off the Kanawha River, if, as and when it moves, should be given consideration at the time that matter is brought in a form where there is a probability of it occurring at a time when there is a probability of it occurring.

[fol. 861] (Narrative resumed.)

I do not think that there is such a probability now. The Ohio River is navigable and the Kanawha River is navigable (764) within certain limits.

I am not sufficiently informed to agree with the statement that the upper-river movement has the advantage of the down-river movement in that the barges go away down stream laden with steel and they come back 90 per cent empty, because I am not sure that the same kind of barge that would take steel down the river would bring coal back. I am not sufficiently posted. These open barges used for the shipment of coal, I do not understand that, generally speaking, they are used for the shipment of all kinds of steel, particularly finished and semi-finished steel, because I imagine they would be exposed to the weather and that there would be considerable damage.

As to whether there are many commodities moving down the river, I am wondering what moves down in considerable volume that would take a lot of barges to get the coal back.

I don't know whether the empty barges coming up the Ohio River are suitable for coal and in quantities that would be worth considering. I have never seen one empty barge coming up the Ohio River. I have never heard of one suitable for coal loading.

I am asked if I ever heard of any empty barges coming up the Ohio River after having gone down loaded. I never heard of any suitable for coal. No one ever told me of an empty barge coming up. I believe empty barges come up, if you want my opinion.

[fol. 862] I investigated the navigability of the Ohio River down below, as to what might happen with respect to the movement of coal, but not the availability of any barges under the present transportation. My answer with respect to the barge matter is based on just ordinary judgment. It may not be worth much, but it is my judgment. I don't remember my witness saying that there — coal barges available at Martins Ferry plying up and down the river. If he did say that then he did.

(786) I believe that it is true that there is a river operation at Moundsville, where there is a river tipple, which ships coal by barge, because the record shows there is a movement of coal from Moundsville up the river of loaded

barges and I assume if they ship coal up the river they must be loaded or partially loaded. I believe that is true, that there is some movement of coal in barges up the Ohio River.

By Mr. Fitzpatrick:

Sometimes we handle steel in open-top cars, billets and so forth, but not certain kinds of steel. I do not know whether that is the same kind of steel moving down the river or not. There may be some.

It is true that great quantities of structural steel move in open-top cars.

By Mr. Orcutt:

If I were making the rate under these circumstances from Colona and Conway to Cleveland, I would make as high a rate on coal ex-river coming from Kanawha or Moundsville or Martins Ferry (767) as I could make any money on and get the traffic to move, and getting the traffic is the important thing, if you do not lose any money on it.

[fol. 863] As to whether getting the traffic is the important thing, profit is the important thing.

If I were making the rate from Colona and Conway to Cleveland on coal coming up the Ohio River from the Kanawha District and our competitor had made a rate on ex-river coal coming down the Ohio River and moving by rail from Mingo to Cleveland I would undoubtedly be justified in making a lower rate from Colona and Conway to Cleveland than our competitor from Mingo Junction to Cleveland under my theory; if I expect to get into the business I would have to do that.

I think it is true that the distance being less, it would be a fair assumption that the transportation cost might be less. We will simply have to take our chance on that when it comes.

By Examiner Curtis:

As to whether we must haul this coal for a rate not in excess of the probable rate that may be effective from Conway and Colona to Cleveland over the Pittsburgh & Lake Erie and the Pennsylvania, it amounts to this. If the Wheeling & Lake Erie Railroad is to participate in this traffic it must put in a rate which, coupled with the river

transportation charge and the charge for transfer, will not be more than the river transportation charge and the charge of transfer plus a rate which may be established by the other carriers to these points through Colona and Conway.

I think if we were in on an equal basis I would have to take my chance on whether I got some of the business or not.

[fol. 864] I can not ask any more than to be put on an equal basis.

By Mr. Orcutt:

Q. Will you look at your Exhibit No. 2 if you have it before you?

A. Yes, sir.

Q. Having explained your theory, Mr. Durham, having in mind the position of the territories producing the traffic, that is, down the Monogahela River and up the Allegheny, and having in mind the fact that the traffic goes past Colona and Conway to (769) Mingo Junction, and that you believe you are entitled to charge a lower rail rate to Cleveland from Mingo than from Colona and Conway, even though the distance is greater, and because the cost of river traffic to Mingo is greater than to Colona and Conway, carrying that theory one step further, what rate do you think the Baltimore & Ohio should make on that same traffic from Marietta, Ohio, at the bottom of your map, to Cleveland? That is, carrying your reasons and your logic one step further?

A. I think if the Baltimore & Ohio expected to move any traffic that way and if they wanted to put in a rate they would have to put in one which, plus the cost of getting the coal on the car, would, at least, be equal to the same transportation costs through Conway and Colona. I do not believe they can do that. I do not believe they can make any money out of it. I do not believe they could put a rate of that kind in and make it profitable. If they could and if I were the Baltimore & Ohio and if these other rates went in I should file a tariff.

[fol. 865] Q. Carrying the logic one step further, to Cincinnati?

A. Take it to Cairo, if you want to.

Q. Coming up the river at each one of these river points where a carrier is situated you would have exactly the reverse situation?

A. Exactly.

Q. The further up the river you go under your theory the lower (770) the rate should be to Cleveland?

A. Depending on whether you want to participate in the traffic.

Q. Bearing in mind that as you go up the river, generally, you are getting nearer Cleveland, wouldn't it be more logical to apply that theory to transportation going upstream than to transportation going downstream, where the farther you go down the farther away you get from Cleveland?

A. I do not see any particular difference. You could put this rate down to Cairo, Illinois and then try and construct a rate back to Cleveland. That, of course, is absurd.

Examiner Curtis: That is like going around Robin Hood's barn to get into the back door, is it not?

The Witness: Yes. That is absurd. I think there are reasonable limits to this proposition as well as any other. You certainly get to the point where your costs would not permit you to do these things. The railroad's costs would not permit it.

By Mr. Orcutt:

Q. Of course, having the theory of costs in mind and assuming all the time that your rate of $1.10 to Cleveland exists, your cost there would be a point above and below [fol. 866] Mingo Junction where that practice would have to stop?

A. Oh, undoubtedly.

Q. As you go up the River you get closer to Cleveland. As you go down the river you get farther away from Cleveland. Having in mind the fact that you could not justify two different (771) ex-Ohio River rates from the starting transfer machines, which of those sets of facts, ordinarily, should control the adjustment?

A. I think we should view them from a practical standpoint.

Q. I am trying to.

A. You know and I know that no coal is likely to go down the Ohio River in any considerable quantities in competition with this coal from the Kanawha District which you say is coming up the river, and you know the reverse is true. We are not going to get into a long cross clash of coals because the commercial competition will prevent that. Why should we theorize upon a thing that there is no practical probability of happening?

Q. This is not theory at all. It is a very grave possibility.

A. I do not see it.

Examiner Curtis: What do you mean, Mr. Orcutt? Do you mean there is a grave possibility of coal moving off the Chesapeake & Ohio down the Ohio River—down the Kanawha River at the 50 cent rate and then being towed up the River?

Mr. Orcutt: No; from mines on the Kanawha River.

Examiner Curtis: Yes; moving down the Kanawha River at the railroad rate.

Mr. Orcutt: No. At a river rate.

[fol. 867] Examiner Curtis: Suppose you put it either way; you have a rail rate, proportional rate to Huntington, where the coal leaves the Chesapeake & Ohio and goes on the river for the (772) river haul. You have an all-rail rate from points on the Chesapeake & Ohio to all points in central territory, including Cincinnati and Louisville and down the river and so on. What I have in mind, is there a possibility of the coal moving under this 50 cent rate on the Chesapeake & Ohio, going down to Huntington and then being put in river barges and towed up the river to be transferred to cars either at Mingo Junction, Colona or Conway?

Mr. Orcutt: I do not think so, Mr. Examiner. That would be too expensive an operation. Take mines on the Kanawha River, having a river tipple comparable to mines on the Monongahela having a river tipple, one moves down stream and the other moves up stream. This rate from Mingo Junction is applicable to either.

Examiner Curtis: That is what I had in mind, is that it would probably cost more to tow coal up the river than it would cost to tow coal down the river.

Mr. Orcutt: Undoubtedly it would.

The Witness: Now, Mr. Examiner, in view of the question that Mr. Orcutt has raised, particularly with respect to that probable movement of coal up the river, and also in view of some inquiry Mr. King made with rspect to mines located along the Ohio River immediately adjacent to our river division, I would like to make a statement in the record at this point:

[fol. 868] The record in this proceeding shows that the primary purpose (773) of our publishing the rates contained in the suspended tariff was to enable us to participate in the movement of by-product coal from mines along the Allegheny and Monongahela Rivers to the destinations shown in our tariff.

In view of the question which you have raised concerning the possible application of our proposed rates from mines in other localities I desire to state that if, upon consideration of the entire record in this case, the Commission feels that our proposed rates should be so restricted as to prevent their application to coal moving from such mines along the Ohio River or on the Kanawha River, we are willing to publish a supplement to our Tariff I. C. C. No. 1669 which will provide that it shall apply only to coal which is loaded into boats or barges from mines located adjacent to the Allegheny and Monongahela Rivers and transported by water to our River Division stations, subject to the condition, however, that the tariffs of the Pennsylvania, the Pittsburgh & Lake Erie and the Baltimore & Ohio, publishing ex-river rates from Colona and Conway, Pennsylvania, shall contain the same restriction.

Mr. Orcutt: We ask that that be stricken because the only tariffs here under consideration are the tariffs filed by respondents and they contain no such restriction. Those are the tariffs which this Commission has to pass on, not some tariffs that the Wheeling & Lake Erie may issue in the future. I do not doubt but what they will have lots to pass on before we get through, but we have just one tariff here to consider.

[fol. 869] Mr. Martin: That is an offer upon the record and I think it should stand just as made. I think it will probably shorten up the cross examination and eliminate some of the issues in this case which will be unnecessary in view of it.

Mr. Orcutt: It will not shorten my cross examination one question.

Mr. Martin: All right.

Mr. Orcutt: It does not answer it at all.

Examiner Curtis: We will leave it stand for what it is worth.

Mr. Orcutt: Exception.

(Narrative resumed.)

By Mr. Orcutt:

I am asked under what theory the Commission would be justified in authorizing the restriction of tariffs to ex-river coal which has moved down stream only. I think in that connection they might properly restrict the rate so as to apply on coal originating in certain territory in the district. I do not see any harm in that, if it were shown that failure to do so might work to the disadvantage of some.

The Government has been to great expense to make the Ohio River (775) navigable below Mingo and Conway and to make the Kanawha River navigable. That is in the record.

It is a part of my theory that those river facilities should be available to all, but I think there is a certain amount of justice in the regulation of these matters so that what might be termed special advantages shall not flow to any particular community, or to any particular carrier. I think they should be available to all subject to any reasonable regulation that the Commission might wish to attach to the rail rate.

[fol. 870] Going back to the fact that we did not place any restriction in the first instance, I think we were justified in that by the fact that apparently the Pennsylvania and the Pittsburgh & Lake Erie in the filing of their original tariff on ex-river coal placed no restriction and we, therefore, concluded and I think it is a reasonable conclusion that when and if they (776) filed the tariff which they seemed to be under the obligation to file, they would not place any restriction as to points of origin, and in such case these same mines along the Ohio River would have made available to them the rate from Conway and Colona.

Q. You say the river facilities should be available to all but that no special advantages or privileges should go to any

community or carrier. What special advantages to a carrier did you have in mind?

A. I think you said that. I think you asked me that question.

Q. Yes, and I think you agree with me.

A. I agreed with you on the theory and on the fact that here we have a rate that has been prescribed by the Commission and the Commission has indicated that that may be extended to certain other territory. Now, if we are not permitted to meet it, there is a special advantage to the Pittsburgh & Lake Erie and the Pennsylvania and that is what I am complaining about.

(Narrative resumed.)

The rails of our line do not serve the Pittsburgh, Connellsville nor Fairmont districts.

Our company has paid nothing whatever in the development of the railway system serving those fields.

[fol. 871] As to whether I think that where that is the case and a carrier is (777) permitted to reach fields served and originated and developed solely by other carriers, and is enabled to reach those fields through subsidies furnished by the Government, that, nevertheless, that carrier is entitled to charge a lower rate for a greater distance than the other carriers charge for a shorter distance, we did not start this matter of using subsidized facilities, if you call it subsidized.

I am asked whether I think I should be charging a lower rate from Mingo Junction to Cleveland than the rail lines charge from the mine to Cleveland when our distance via rail is greater than the distance via rail from the mine via the other carrier, (778) I do not think we should be foreclosed from putting in a rate that will enable us to participate in the traffic if we can do so without putting an undue burden on other traffic or without putting any burden on other traffic. The fact that we have to haul it a slightly greater distance should not foreclose us from being able to participate. On that theory there are a lot of railroads that might as well shut down.

By Mr. Orcutt:

Q. Take the Harmer mine in the Pittsburgh District. We shall show by an exhibit later that the distance from that Harmer mine to Cleveland via the Pennsylvania is 148 miles.

You propose to take coal from that mine down the river some 100 miles to Mingo Junction. Your distance from Mingo Junction to Cleveland is 152 miles, and you propose to charge a lesser rate from Mingo in order to get into that coal territory than we charge from the mine itself. Don't you think that is a special advantage?

[fol. 872] A. Answering as to the particular Harmer mine, I do not think we will have any coal from the Harmer mine. That is a mine belonging to the Wheeling Steel Corporation, but the principle is the same. I do not understand that if we could furnish the service without putting any burden on any other traffic and we can use the river to reach that, that we should be foreclosed from putting in a rate that will enable us (779) to do so, and coupling it up—I do not understand the theory that seems to be in your mind that in order to reach the Pittsburgh and Connellsville districts we should build a new railroad, if we can reach it by the river.

Q. There is no theory in my mind. I am merely testing your theory. You feel, do you, that with the aid of the Government subsidy, the amount they have spent on the rivers and regardless of whatever adjustment may now exist from those coal territories as fixed by the Commission, the Commission should permit you to make a rate low enough from Mingo to Cleveland so that the business will be drawn 100 miles down the river and the adjustment violated merely for the sake of using the river facilities which the Government has spent so much money on.

A. I do not know that the adjustment will be violated.

Q. We will show you that it will.

A. That is something that will come later. If it is, why, the first step has been taken when this rate was agreed to be established from Colona and Conway to Youngstown. I do not understand that any of these railroads have any vested rights in transportation.

[fol. 873] (Narrative resumed.)

I understood that the Pittsburgh and Lake Erie and the Pennsylvania Railroad had agreed that they would put in whatever rate the Commission found was reasonable from Colona and (780) Conway to the Youngstown District and the Commission has found that 77 cents was a reasonable rate. I understood that grew out of the application of the Pittsburgh, Lisbon & Western to build a railroad into

Youngstown. That application was denied on the representation of these carriers that they would do this thing. We were not consulted when that agreement was made as to what effect it might have on our end of the country or end of the railroad or our section. I got my understanding from reading these reports. I got that impression. If that is wrong I will withdraw it. I think there is a statement to the effect that they have said they were willing to publish a rate which was found reasonable by the Commission.

The statement was that the carriers agreed to provide the facilities when and if they were necessary and my understand- is that they also agreed to publish a rate that the Commission found to be reasonable. If that is not correct that particular phase of it is wrong.

It think the rate from the Kanawha District to Cleveland on commercial coal is $2.39. That is my recollection of it. My ex-river rate from Mingo to Cleveland is $1.10, leaving $1.29 difference to defray the river cost and the cost of elevation. Deducting the coal elevation cost which is 12 cents, leaves $1.17, out of which to pay any river cost between the Kanawha District and Mingo Junction.

[fol. 874] I do not think that that situation is at all apt to affect the level of the rates from the Kanawha District. The Connellsville rate to Cleveland is $1.90. Our rate of $1.10 leaves 80 cents to defray the river cost and the cost of elevation. The cost of elevation being 12 cents there remains 68 cents out of which to defray the river cost. (782) The river cost estimated by us is 45 cents. Deducting that from the 68 cents leaves 23 cents, advantage via Mingo Junction under the all-rail rate from Connellsville.

Q. By the same token we have an advantage of $1.17 less whatever the cost is from Kanawha as the advantage of your route over the Kanawha all-rail route, haven't we?

A. That is from the standpoint of freight rates, yes, sir—standpoint of transportation cost. Remember this, that this $1.17 has not yet had applied to it or deducted from it river transportation cost.

(Narrative resumed.)

The advantage of our route to Cleveland from Connellsville is 23 cents under the all-rail rate. To meet that from

Kanawha you would have to deduct 23 cents from the $1.17 (783) leaving 94 cents.

Q. For whatever amount the river transportation can be performed from the Kanawha District to Mingo Junction, the difference between that figure and 94 cents is the advantage that the Kanawha district will have over Connellsville on commercial coal to Cleveland is it not?

[fol. 875] A. No, that is not true, because the rate is not the same. The rate from the Connellsville district is $1.90 and the rate from the Kanawha district is $2.39.

Q. We have considered that in our computation.

A. No, it does not amount to that.

Q. In order to get your 23 cents we started with a rate of $1.90 from Connellsville.

A. Let us see. I would like to answer that by saying that based on the best information I have been able to gather on this subject, and this is an estimate I think that——

(Narrative resumed.)

This is my theory, then. That is all of it. It is based on as much information as some of these theories (784) we are talking about. I am not engaged in river transportation.

Q. We will be glad to listen to your theory as to what the cost might be. You stated on direct that you knew nothing about it; all that you have been able to get is from the Union Barge Line, a cost of 45 cents.

A. You have used that figure in your first calculation. In order to match that I think I should be permitted to use some estimate of transportation costs from the Kanawha River.

Q. No. We don't want any estimate of cost.

A. Then I do not want to go into the discussion.

Mr. Martin: Mr. Examiner, if Mr. Orcutt is not fair enough to permit the witness to make a parallel calculation as to the Kanawha, I submit this whole line of inquiry [fol. 876] should be stricken out simply because he is not permitted to make a proper answer to the question. We are left with a figure of $1.17 hanging in the air without any chance to explain whether that is enough to cover the cost of transportation or not enough to cover the cost of transportation.

Mr. Orcutt: No, it is not left hanging in the air.

Mr. Martin: You deducted 23 cents from it and then you left that result hanging in the air.

Examiner Curtis: Let us see what is done. In response to Mr. Orcutt's questions on cross examination certain theories (785) were expressed by the witness on the record. His theory has been based upon the movement of coal from [fol. 877] mines on the Monongahela River, Connellsville region in particular, by two routes, one via Colona and Conway and the other is via Mingo Junction. We go on down the river and get into a difference in the cost of moving coal by river and the question is as to what the rates ought to be by river and rail to Cleveland from mines on the Kanawha River, from Huntington thence up the river and up to Mingo Junction or Conway, the final destination being Cleveland. That is what we have in the record.

Mr. Orcutt: No, Mr. Examiner. I think you misunderstood the question.

Examiner Curtis: We had some cost figures of 45 cents and we have no figure at all for the movement of coal from Huntington, West Virginia, up to Mingo Junction or on up farther to Conway and Colona. The witness has said he used some sort of estimate in the cost of that river transportation and you do not want it.

Mr. Orcutt: We do not want any estimates. We want facts.

Examiner Curtis: Let us see if he has the facts first. Do you have any facts at all on the cost of transportation from Huntington, West Virginia, up to Mingo?

Mr. Orcutt: Huntington was not mentioned in that.

Examiner Curtis: I understand, but that is where the coal goes in from the river.

Mr. Orcutt: No, Mr. Examiner.

Examiner Curtis: Is it not?

[fol. 878] Mr. Orcutt: No, not at all. It goes directly from the mine tipples on the Kanawha River into the barges.

Examiner Curtis: All water?

Mr. Orcutt: All water to Mingo Junction.

Examiner Curtis: It will go down the Kanawha River to the Junction of the Kanawha with the Ohio River as far as Kanawha and then move up?

Mr. Orcutt: That is right.

Examiner Curtis: Do you know anything about that cost?

The Witness: I do not know anything about the cost in that particular section of the Ohio River. I have no definite information relating to that particular situation. I have some information which I can give that may throw some light on it.

Examiner Curtis: Let us see what that is.

Mr. Orcutt: I object.

Examiner Curtis: Let us wait and see.

(Discussion off the record.)

By Mr. Orcutt:

(787) The Connellsville rate to Cleveland all rail on commercial coal is $1.90.

From testimony that has already gone in in this case, it is correct that we propose $1.10 from Mingo Junction to Cleveland. Your computation is correct if you subtract $1.10 from $1.90 and get 80 cents. Your computation is correct if you subtract 12 cents as the elevation charge from 80 cents and get 68 cents. Your computation is still correct if you subtract 45 cents or the cost of river transportation from Pool 6 to Mingo Junction from the 68 cents [fol. 879] already arrived at and get an answer of 23 cents. That 23 cents represents the difference under the all-rail rate from the Connellsville District via our route via Mingo Junction and our proposed rates. (788) You are correct in assuming that the rate from Kanawha to Cleveland on commercial coal, all rail is $2.39, and that again, our rate from Mingo Junction to Cleveland is $1.10. Subtracting $1.10 from $2.39 you get $1.29. Subtracting 12 cents from $1.29, the 12 cents being the cost of elevation at Mingo Junction you get $1.17. The 23 cent advantage under the all-rail rate from Connellsville to Cleveland which our route has over the all-rail route, if subtracted from $1.17, the answer is 94 cents.

Whatever the transportation cost may be from mines on the Kanawha River having a river tipple to Mingo Junction, the difference between that cost and the 94 cents, whether it be more or less, represents the extent to which I narrow or do not narrow the existing all rail difference on commercial coal to Cleveland from the Kanawha District as against the Connellsville District.

By Examiner Curtis:

There is quite a spread between the all-rail rate (789) Connellsville rate, into Cleveland, on the one hand, and the Kanawha district rate into Cleveland on the other, and that spread is 49 cents.

By Mr. Orcutt:

The rates from the Connellsville District and the Kanawha District to Toledo are the same $2.39. Our line serves Toledo.

[fol. 880] It is a direct main line, the river division all the way to Cleveland. We do not carry a lot of coal to Toledo. We are shut out of Toledo pretty well by the rate situation in the southern fields and the quality of coal and, to some extent, by the, I think perhaps cross haul coal on this lake cargo rate, if I may be pardoned for mentioning it. There are large consumers of by-product coal in Toledo. That is the Interlake Iron Corporation. I guess that is the only one.

(790) We had not given consideration to the publication of ex-river rates to Toledo. As to whether we will get some of that tonnage ex-river through Mingo and then to Cleveland and then across lake to Toledo, our tariffs are not so constructed that we can ship that through by lake. We do not have any dumping facilities at Cleveland and there are no dumping facilities available to us at that point of other carriers. We do not have any dumping facilities at Lorain and the dumping facilities of the other carriers at that point are not available to us.

I do not understand that the Otis Steel Company have a coal dump for transferring commodities from car to barge at Cleveland. I understand they load steel products on the car for shipment across lake. That would not be the kind of facilities which would be used for the transfer of coal.

The loading of lake cargo coal is not usually performed (791) by clam shell. It would be too expensive.

[fol. 881] It can be done, you could load it out of pails. I think the clam shell would be quite expensive. I do not believe there would be any line attempting cross hauling loading with clam shell. The ordinary clam shell used at Cleveland is not the kind of clam shell that we propose to use at Mingo and I do not understand that it is the same

kind of a clam shell that is intended to be used at Martins Ferry.

I am asked if the Martins Ferry clam shell is more economical than the one they use at Cleveland, is there any law against their using that. No. I will say as an opinion that the length of time it would be necessary to delay a large boat to load by clam shell at Toledo—at Cleveland would make it prohibitive.

(792) As to whether I know if the American Steel & Wire Company unload a great quantity of limestone with claim shell from barge to car, I do not know that they unload great quantities of ore. I do not know of any reason why that clam shell could not be used to unload coal from the cars to the barge. I do not think it is a practical operation.

By Examiner Curtis:

The American Steel & Wire Company does not have any device where they can take a car out on the pier and turn it upside down and let the contents into a barge or let it go at the bottom. Neither has any other industry that I know of.

By Mr. Orcutt:

I am referred to my Exhibit No. 1 and asked to indicate anything in there that restricts the application of those rates so that they will not apply upon coal destined to Cleveland to be hauled in cross lake movement or in lake cargo trade. There is nothing in the tariff. It is a physi- [fol. 882] cal fact that we have no facilities and no arrangement for reaching (793) any other railroad company's facilities that are suitable for performing the service of dumping the coal into the lake vessels.

Under this tariff we deliver directly to the American Steel & Wire Company. They have facilities for loading and unloading lake vessels at their plant, facilities used for ore and limestone.

By Mr. Orcutt:

(795) Q. I would like to ask Mr. Durham if coal is shipped from the Frick Coal Company on the Monongahela River to Mingo Junction, taken down the river by the Carnegie Steel Company, unloaded at Carnegie Junction by the

Carnegie Steel Company, shipped to you at the interchange, moved by you to Cleveland and delivered to the American Steel & Wire Company at a rate less than the lake cargo rate, is there anything in your tariff or in the practice of your line as a carrier, or in the manner in which you can police the situation, which would prevent the American Steel & Wire Company from loading that coal on a vessel and shipping it to the head of the lakes or anywhere else?

A. Yes. They could load it on the vessel and dump it in the lake if they wanted to.

(Narrative resumed.)

They can use it for bunker coal.

We have facilities at Huron. I don't know what rate we propose to establish to Huron on lake cargo coal from Mingo Junction, ex-river. That is probably a question which we will have to face if these tariffs go into effect.

[fol. 883] By Mr. Orcutt:

(797) I stated we had no dumping machine at Cleveland, for unloading lake cargo coal. That does not prevent us from publishing lake cargo rates to Cleveland if we want to publish a paper rate. They would be paper rates, unless we had access to dumper. As to why we publish them, I think if there is a rate in there that that is probably the result of a long standing rate. Formerly we had a dumping machine there. I do not remember the exact history of that. That is probably the outgrowth—we just continued it. We do not move any lake cargo coal into Cleveland.

Q. You know that the Wheeling & Lake Erie publishes lake cargo rates to Cleveland, though, at the present time, do you not?

A. If counsel will say we have a tariff showing lake cargo coal I will accept that, if that is in existence. It probably is. (798) If we have a lake cargo rate to Cleveland we probably have divisions with the Pittsburgh & West Virginia. That would simply be a paper arrangement.

Q. I understood you this morning to say that the publication of a rate to Huron had not received your consideration but probably would have to in the future.

A. I think I responded to your question when you asked me if I did not think it would have to receive consideration in the future and I said that probably it would have to.

Q. That consideration will involve a consideration of the relationship of the origin differentials, will it not?

A. We will have to take into consideration all the pertinent factors and if that origin differential is one of them [fol. 884] it will have to be considered, of course.

(Narrative resumed.)

(799) I am asked if I considered any differential 50 cents, or otherwise, Ohio No. 8, as against mines directly across the river. First, I want to clear up this 50 cents between the mines on the other side of the river. My understanding is that the mines immediately across the river from our river division stations take the same rate to Cleveland that the number 8 district mines on our line take, namely $1.74. That is not true as to Lorain. I guess it is not true as to Toledo. I am quite sure it is not true as to Lorain because I think my present recollection is that Lorain takes a rate of $1.84 which is the Pittsburgh rate, from the West Virginia side of the Ohio River, in the vicinity of our river division stations. I know that there is a difference in the rate existing as between Pittsburgh, Connellsville and Fairmont districts. I knew about it in making our rate. As to whether I took it into consideration (800) it depends altogether on what you would say would be consideration.

In our calculation, as I have shown, we have a rate which produces from the Connellsville district a total transportation charge which is exactly the same amount under the all-rail rate that we calculate the transportation charge on the Connellsville district, specifically Pool 6 by river-rail to Youngstown.

I gave no special consideration to the differential, Connellsville over the Pittsburgh District. The matter as we view it, is one where apparently for the future the larger volume of coal will come from the Connellsville District. [fol. 885] I did not treat the Kanawha situation as being one that required any special consideration at this time because I am (801) firmly of the opinion that the Kanawha situation will not enter into this for a long time to come. As to what consideration I gave the differential of 35 cents as between the northern and southern lake cargo rates, that 35 cents differential as it now stands was not a part of our consideration in this matter. I do not think that the lake

cargo coal rate situation need necessarily be disturbed by this. That is my opinion.

As to whether I think that the lake cargo rate from the Ohio No. 8 district, with $1.43 to Cleveland, being a proportional rate, can be continued for the same haul in place of our $1.10 rate, which is likewise a proportional rate, I would see no reason why that could not be continued on account of this $1.10 rate than you would change it because of a division of a joint rate.

As to whether I think that the Ohio No. 8 shippers shipping lake cargo coal to Cleveland or Huron on a rate of $1.43 will be content to sit idly by and let us charge the proportional rate of $1.10 from Mingo to Cleveland on commercial coal, I do not know what they will do. We will have to meet that when it comes, if it does come.

(802) Q. Your counsel gave quite a lengthy dissertation this morning on the record as to the limitations which could be placed in a tariff if the Commission thought it necessary so that these rates would not be applicable to lake cargo coal. Of course, your present commercial coal rate tariffs say nothing about lake cargo coal, do they?

[fol. 886] A. I believe they do not.

Q. They apply on bunker coal, don't they?

A. Yes.

(Narrative resumed.)

I am asked if there is any that *that* I know of from my own experience of from having talked with my counsel about it, in which the domestic rates may be confined to coal which is actually used in Cleveland or one of these lake ports so that they will not apply upon coal which may be transshipped for a lake movement. I can not state definitely that I know of a way in which a purchaser of coal moving under a commercial rate could be prevented from dumping the coal into a vessel for transshipment, and the rates we proposed are commercial rates.

I have our O. S.-A report for December, 1930. (803). Item 24 is net ton miles per mile of road per day. In our annual report to the stockholders for 1930 on page 22, item 24, we show an item Unbalanced Traffic. That figure is 23.71.

The preponderance of business is westbound. Our O. S.-A report for December, 1930, Item 7 shows car miles (804)

in thousands, loaded eastbound 14,778,000, and loaded west 23,961,000, and empty eastbound 13,927,000, and empty west 6,429,009. I would not know what it would mean in empty car miles unless we had the distance it moved.

If you ask the question if the percentage means something—if you put it in that form, I will try and answer it. It shows we had empty cars moving eastbound 13,927,000 and empties moving west 6,429,000. This statement shows, of course, that we had more empties moving east than we had moving west.

[fol. 887] Examiner Curtis: Have you had correspondingly more loaded cars moving west than you had moving east?

The Witness: That is approximately so.

(Narrative resumed.)

By Mr. Orcutt:

(805) On this traffic we propose to originate under this suspended tariff the loaded movement will be westbound. In other words in the direction in which the preponderance already is, and our empty movement will be eastbound, in the same direction in which our empty movement already preponderates. Our costs do not contemplate that in the face of this we expect to use these empty cars that haul ore down to this district to haul this coal back.

I am asked if our costs studies take into consideration this preponderance of empty movement eastbound and the preponderance of loaded movement westbound. Our cost studies take into consideration all the service necessary to transport coal and to return the empties without any loads.

Q. That does not answer my question. Can you answer the question. You may not be able to.

Mr. Martin: Maybe if he stated it the other way around. Reverse the operation and state whether or not your cost studies include the costs of moving all the empties down from (806) Canton, Cleveland, Massillon and Lorain to the River Division and the bringing of those cars back under load with ex-river coal?

The Witness: That is right.

Mr. Martin: Does that explain it?

[fol. 888] The Witness: Does that explain it?

By Mr. Orcutt:

Q. Not entirely, no, because your cost study does not contemplate coal trains solely. You fill up your trains with mixed merchandise, supplementing them, rather with loads of this coal.

A. That is correct, of course.

Q. I think your cost study shows it is. I beg your pardon.

A. I accordingly beg your pardon. It does not show it.

Q. I was wondering if this preponderance of movement which affects the merchandise as well as the coal were taken into consideration in any way.

A. The cost study includes all of the expense necessary to take the empties down to Mingo Junction from the destination points and return them to the destination points loaded with coal, not mixed loading.

Q. I did not mean to imply that the loading was mixed. The trains are mixed after you get to a certain point, both merchandise and coal.

A. The unit cost for this service was determined upon the basis of gross ton miles, whether it was pig iron or what will you. (807) The cost of moving a gross ton is the cost of moving a gross ton. Then we apply the cost of moving a gross ton to the cost of gross tons necessary to move in order to move the coal from Mingo to Cleveland and return the empties to Mingo and to the other points.

Q. But you assumed, did you not, that after a certain point the cost of moving a gross ton of mixed merchandise was the same as the cost of moving a ton of coal?

[fol. 389] A. No sir, I did not.

(Narrative resumed.)

I am referred to my Exhibit No. 15a. I do not know what unusual expense there was in 1927 for the maintenance of the Monongahela River. It is true, our maintenance cost for 1927 was almost double that of either the preceding or following year. I can not give any information in connection with these figures.

(808) I don't know whether any of that tonnage shown for the Monongahela River on varions cammodities, for instance, coal, on my Exhibit 16, is shown in the tonnage reported for the Allegheny River. I don't know whether there is any duplication there or not.

Q. On your Exhibit No. 17 would your answer be the same? That shows the tonnage on the Allegheny and Monongahela and Ohio Rivers above Beach Bottom, West Virginia?

A. That is correct.

Q. Isn't it possible that all of the tonnage considered as moving on the Ohio had already had a movement on either the Allegheny or Monongahela?

A. There is that possibility.

(Narrative resumed.)

My Exhibit 18 is a picture of the Colonial Tipple of H. C. Frick Coke Company. (809) I was not present when that was taken. One of our photographers whom we employ took it.

As to why it happens that we have shown no photographs of scenery at mines other than captive mines, they were just more convenient to reach, that it all.

[fol. 890] As to how it happens that all the pictures of mine operations are apparently those of the steel corporations, I suppose that was simply because on the day the photographer was there those were the operations that were easiest to catch. I did not make any effort to secure any photographs or pictures of the facilities of the Union Barge Line.

My Exhibit No. 20 is a picture of the A. O. Ackard towboat towing a string of barges loaded with coal. It is a steel corporation barge and towboat.

(810) I have shown that as a typical tow on the Monongahela River. I have shown another photograph as a typical tow—as a tow on the Ohio River. I would not go so far as to say that it is entirely typical of the Ohio River tow. That is the one in Exhibit No. 26. I do not know whether that is a steel corporation tow or not. That was taken by the Government and it might also be a corporation boat, as I understand it—a steel corporation boat. Apparently, according to this record, that picture was taken away back in 1924.

As to whether the steel corporation did not have nearly as many barges or was not in the towing business so extensively as it is now at that time, I don't know. I think that would be easy to determine.

I made some inquiries as to the cost of towing by the A. O. Ackard outfit. I did not find out any very definite figure as to the cost. They told me they believed that certain costs wkere approximately correct.

[fol. 891] I asked them for a quotation in writing. (811) They did not give it to me. They are not necessarily engaged in serving the public. I do not understand that an independent shipper with a comparatively small amount of coal can employ them to do this towing service. As to whether to that extent, at least, this A. O. Ackard is not a typical towboat, it represents the operation on the Monongahela River so as to describe how it takes place. That is what it is intended for.

Q. The operation of the industry who is to be the greatest beneficiary of the rates you propose?

A. I would not say that.

(Narrative resumed.)

As to what other towage is it typical of. I believe it fairly represents the general custom of towing on the Monongahela River. I have seen personally—unfortunately, I do not have a photograph of it—a similar tow by another company and I was led to take this photograph or arranged to have this photograph taken because of having seen one that did not belong to the United States Steel Corporation.

(812) I stated at page 87 of the record here in my direct testimony that I had ascertained that the equipment of the Carnegie Steel Company would move the tonnage from the H. C. Frick and National Mining Company operations on the Monongahela operation to Mingo to be shipped under the suspended rates to the American Steel & Wire Company and the National Tube Company.

As to how I know that the equipment of the Carnegie Steel Company is ample, by inquiring of the representatives of the American Steel & Wire Company and of the National Tube Company. They made their inquiries or [fol. 892] so I am informed, of the Carnegie Steel Company. As to how much additional tonnage this will furnish for the Carnegie Steel Company over and above that which they have already, per annum, I think it will probably furnish in the neighborhood of 1,000,000 tons a year.

I would say as a general policy that the steel corporation is not in the habit of having more equipment that it

can ordinarily use. I don't know that probably it is true that they are in normal times pretty generally using their tow boats and towage equipment to capacity.

(813) As to whether that was true when I made my Exhibit No. 31, I feel sure they were not using their towing equipment to capacity in the month of July of this year because I saw a lot of their equipment moored on the Monongahela River out of commission because they did not have anything to do.

My attention is directed to Exhibit No. 31, showing only one boat out of commission and that is the old one they have. That report was taken from a report of the Inland-Waterway Freight Transportation Lines in the United States, U. S. Department of Commerce, Series No. 32, 1930, and I would guess that that probably represents a condition which existed some time during the year 1929.

I am asked to refer to my Exhibit No. 32; that is a photograph. The interchange between the Carnegie Steel Company and the Wheeling & Lake Erie is not shown on the picture. As to the direction in which it lies, it is to the left of the picture, in the foreground, approximately 500 to 1,000 feet.

[fol. 893] (814) I am asked how much of an interchange yard we have with the Carnegie Steel Company. There is a lead from our yard which comes up to connect with the Carnegie Steel Company, there are a series of tracks. I can not tell you the number at that location. I think the usual operation is that we shove the cars into an interchange track which is located, as I have said, about 500 feet to 1,000 feet to the left of this photograph or east of the transfer plant as it is shown here. However, in estimating our costs we provide for placing the cars at this interchange plant and then coming back and getting the loads.

The Carnegie Steel Company have their own engine or engines at that plant. Generally speaking, they perform their own spotting except at times they have, I believe, called on us to spot cars at the ore dump. It is my recollection that that has not (815) occurred for a long time. We have not paid them a switching allowance. They pay us when we spot cars; no allowance for the Carnegie Steel Company. On joint traffic we do not receive an allowance. We pay them an allowance. They perform the work themselves. I can not tell you in detail that they perform all of the

spotting service which, as a general rule, is expected to be performed by the carriers at plants of this kind. I do not have that particular detail at my fingers' end, but I know we do not make any allowance at this plant and I know they have their own locomotive for inter-plant switching.

Their plant facility as far as I know is not a common carrier. I believe it is not because I think we would be making an allowance or that some request would have been made for an allowance.

[fol. 894] I am asked whether we put the empties, if they want to load any and need empties, on this interchange track and they get them with their engine and put them at various places for loading. In some instances we may spot the cars to the loading point. I can not tell you specifically now. I would have to guess. (816)

As to whether generally the operation is to put the empties on the interchange track and they come and get them and distribute them, I would not say we do that more than we do it the other way. I think it is more or less a matter of what the physical situation is at the plant at the time we may spot the empties or take them in for spotting. My recollection is that at times we take them into the places where they are to be loaded and at other times we leave them for the Carnegie Steel Company.

We know our obligation under our line haul rate, and our obligation is to spot the empties at the place to be loaded. That is what we plan to do at this place. If you confine it to the Carnegie Steel Company at this point, I will say yes; no matter where it is or how far from our right of way.

Q. Will you please describe the operation, then? Suppose there is a tow of six barges that comes down to Mingo Junction consigned to the American Steel & Wire Company or going to the American Steel & Wire Company, will you please describe the operation, how that is received by the Carnegie Steel Company and how the cars are placed, how the (817) cars are loaded, how the cars are taken out, how the cars are weighed and how the cars are billed? I think [fol. 895] if I just let you do that, it will save some time.

A. I think probably that is right.

In the event this ex-river coal would be transferred from barges to railway cars by the Carnegie Steel Company's

plant at Mingo Junction, operation of the plant would be started at approximately 3:00 P. M., and the railway transportation service would be performed by our company substantially as follows:

Assuming that puller engines would bring in the empties for loading from Pine Valley, filling up track No. 11 with approximately fifty cars, and placing the balance (or approximately forty cars) on track No. 10, this requiring no switching or classifying of the empties on the part of the yard engines; that the coal cargo had arrived sometime prior at 3 P. M.; that the loading machine was ready to start operations at 3 P. M. (the Carnegie Company will use this machine for the loading of their coke from 6 A. M. to 2:30 P. M. making the last pull of their loads at this latter time), and on a basis of one clear track (No. 3) under the loader for W. & L. E. use, the following operations would be required on the part of yard engine (2700 class) at Mingo Yard in the handling of ninety empties and ninety loads involved.

First—Just as soon as the plant had ceased operations at (818) the loading machine, and track No. 3 cleared of its coke loads, yard engine would place thirty empties at the loading machine, fifteen of these being on track No. 3 east (or north) of the loader, and fifteen on the tail track at the east (or north) end of No. 3. The operation involved here would be the movement of yard engine (light) from its working point at the east end of Mingo Yard to the east end of [fol. 896] No. 11, coupling on, making cut back of thirty cars, pulling through west "Y" to dumper lead and looking out for the hot slag runs and the Pennsylvania Company engine delivering ore, lining switches in Carnegie Yard and stopping to clear lead to loaded; shoving around lead (and lining back switches in the Carnegie yard), cutting off empties east (or north) of the loading machine, track No. 3, and setting hand brake; uncoupling of engine, and light movement of engine back to its working point at the east end of Mingo Yard.

Up to this time that operation has not been almost altogether within the plant confines of the Carnegie Steel Company. The movement has been from our yard to the Carnegie Steel Company.

When we once got there the movement was altogether within the plant and that is the point we have reached right now. The locomotive is now back to our own yard.

(819) This description contemplates that this track No. 3 at the end of the unloader in Exhibit No. 32, from the time of the day stated by me on, will be set aside for our use, and that is the way the Carnegie people agreed with our yard people that the operation would probably be handled. That is the best we can do, is to discuss as to how it shall be handled. Our understanding does not contemplate the payment by me of any sum for the use of that track.

It is estimated this operation would consume approximately forty minutes.

[fol. 897] Of course, the direct spotting under the loading machine would be performed by an endless cable which is in operation and does the spotting of the cars at the machine.

The Carnegie Steel Company would operate that.

Second—With the loader handling approximately 400 tons (a conservative figure) per hour, at about 6:45 P. M. the yard engine would be required to move light from its working point at the east end of Mingo Yard to the loader, pick up twenty-five loads from track No. 3 move to Mingo Yard through West (820) "Y" in on No. 11 and back on the lead, putting the loads away on a clear track available at the east end of the yard. Engine would then move light to east end of No. 10, picking up ten empties on that track, doubling over to No. 11 and picking up the remaining twenty empties there, shoving down No. 11 to clear West "Y" switch, and then on to the loader in a manner as more definitely described in operation No. 1. Upon arrival at the loader, yard engine would set five remaining loads on No. 3 over to No. 4 (storage track) shove thirty empties on No. 3 and tail track, uncouple engine, pick up the five loads from No. 4 move to Mingo Yard through West "Y" put loads away, and engine return light to its working point at the east end of the yard.

That is our engine all the time. It is estimated that this operation would consume approximately one hour and twenty-five minutes.

Third—At about 10:45 P. M. the yard engine would again be required to put up empties (this time the remaining thirty to be moved from No. 10) involving the same movements as described in No. 2, consuming approximately one [fol. 898] hour and twenty-five minutes in this service.

Fourth—At about 3:00 A. M. the yard engine would move light from its working point at the east end of Mingo Yard to the loader, pick up fifteen loads from No. 3 and return to Mingo (821) Yard through West "Y", putting loads away, uncoupling engine and moving back to the loader for the remaining fifteen loads, handling to Mingo Yard and putting them away, uncoupling engine and returning to working point at east end of yard. It is estimated this operation would consume approximately one hour and ten minutes. That is the whole operation.

From that operation, we consider it in our cost the spotting of the cars on the Carnegie Steel Company property at the unloading device. That is so that we would have the cost covering all the service that we would likely be required to perform.

The bill of lading would be prepared in our office at Mingo Junction, yard office. They would probably be prepared by the Carnegie Steel Company. That billing would not be any different from any other billing we have from the Carnegie Steel Company.

The billing in that case would doubtless be handled in the same manner we handle ore billing from the lake front. We (822) transfer thousands of cars of ore and bill it out from our ports. I do not mean just the Wheeling & Lake Erie, but all the lines transfer and bill out ore under similar circumstances. I am not prepared to state all the mechanics [fol. 899] that have to be gone through to make the waybill.

My opinion is if the coal should be billed to a consignee—to illustrate, I think if it were billed originally from the mine by the H. C. Frick Coke Company we would probably be instructed by the H. C. Frick Coke Company to bill it to the American Steel & Wire Company. There is certainly no difficulty about the mechanics of that because it would be set up, I would say, in the same manner as the ex-lake ore.

Our office in Mingo is within a mile from this operation.

I would not go so far as to say that the man billing the coal for us would not see the coal ever. I would not go so far as to say that it would be an exception if he did. I would say that, that we would be in the same situation that we are if we bill out a car of steel from the Carnegie Steel Company. The man who makes the bill does not always see a car of steel. (823) I can not see what difference it makes. I can not see where there is any difference about it.

I am asked if it is customary for our agent there and will it be customary when this coal is billed before he signs the billing for it or issues it, whatever he does, to walk down to this plant or down to the interchange track and see the coal or see it being unloaded from the barges or what will he know about it other than what the Carnegie Steel Company tells him. He will have this check of the crews handling this switching, who know where the coal comes from and whether it is coal. He will know it is not limestone or fluorspar or coke breeze or some other thing.

[fol. 900] I would not say that it is an invariable practice for our agents to check up with switching crews before they bill any traffic. I would not say that it is a rare exception for them to make a check of that kind.

I did not see any coal stock pile of the Carnegie Steel Company in this photograph No. 32. I am not fully acquainted with the details inside of that plant. I cannot tell you the details of the plant. (824) I have walked through there several times.

I have been definitely told that the Carnegie Steel Company will not permit the use of this transfer facility for anyone other than one of the steel corporation subsidiaries. They have said to me definitely that they would not make their facilities available to anyone else. I do not know what it costs them to perform this transfer service themselves. I have here some figures that were so high that I would not want to give them to you. The American Steel & Wire Company did not indicate to me that they knew what the cost would be, or the National Tube Company either.

In connection with my cost study I stated that our total freight operating expenses as well as our maintenance costs and other costs for two years were taken in a lump sum. No separation of the years was made. (825) That was for the reason that one year was relatively high and the other relatively low as to traffic. By taking the two years, I felt that they made a representative year. In our cost study, the only commodity whose transportation cost we were studying was coal. That is the only commodity to which I applied the transportation costs.

[fol. 901] Two of the four points to which this coal was to move were Canton and Massillon.

Q. In spite of 1930 being a low traffic year on coal to Massillon, didn't you move almost four times as much coal in 1930 to Massillon from Ohio No. 8 district originated by your road as you did in the preceding year which you said was a relatively high traffic year? That will be shown on your Exhibit No. 3, I think.

A. What you say is substantially correct, but that has nothing to do whatever with the manner in which we have applied our costs or in which we determined them.

(Narrative resumed.)

(826) That is not one of the frailties of it. It is one of the strengths of it.

I am asked if it is not true that to Canton we hauled much more coal from Ohio No. 8 district originated by us in 1930 than we did in 1929, a high traffic year. Granting that to be true, still, that has nothing to do with the application of our costs. If coal was the sole traffic considered in our cost study, it would be, but it was only in the application of costs determined from gross ton miles handled and not from any commodity handled.

At Martins Ferry there is a $3.60 reciprocal charge that is endorsed by us. As to whether I took that into consideration in the cost study, that is not in this particular cost study. This cost study covered the movement of coal from a plant of the Carnegie Steel Company because that was one of the points where we might get a very large volume of coal. Any coal (827) we could get through Martins Ferry plant would be of a small volume and if we get any considerable volume we will build a track of our own [fol. 902] and get away from the charge.

Q. He seems to think you are getting about 600,000 tons a year?

A. If we do we will build our own facilities to load it.

(Narrative resumed.)

I did not make any computations in my cost study to cover the cost of moving coal from Martins Ferry.

Q. That $3.60 switching charge being absorbed by you at the present time and at the present time you having no tracks whatever so that you can reach the operation if the Baltimore & Ohio saw fit to publish their switching tariff

so that $3.60 could not be absorbed by you, you would have no way of reaching the plant.

A. That would probably hold true for 10 days and at an expense of perhaps $12,000 we would be ready to serve it, and we have been giving consideration to extending that line to serve other mines. I should welcome that opportunity to extend that line.

Q. Rehabilitate your main line?

A. All right. I will accept the modification.

Q. I understood we were criticized for not calling it a main line the other day. Do you perform switching within the plant of the Wheeling Steel Corporation at Steubenville or (828) do they do it themselves.

A. Yes, they do it.

(Narrative resumed.)

We do not pay them an allowance. I do not know that they have any transfer facility on the side of the river where we are located by which they might take advantage of it. If I said they did, I would like to correct that.

[fol. 903] By Mr. Fitzpatrick:

My understanding is that at Steubenville on the side of the river where the Wheeling & Lake Erie tracks are that they do not have a plant for the transfer of the coal from barges to cars. My understanding of the situation is that their coal unloading plant is on the other side of the river, on the West Virginia side of the river.

By Mr. Orcutt:

It is approximately correct, that we contemplate moving practically all of this ex-river tonnage we can from Mingo Junction.

(829) The information on Exhibit No. 46 was furnished to me by the American Steel & Wire Company, made into the form of an exhibit and submitted to them for their approval. They sent me the information in the first instance.

Q. In your direct examination at pages 279 and 280 of the record you were referring to your reasons for establishing this rate and you said:

"The consumer of coal at Cleveland, Canton, Massillon or Lorain is not interested in the question of relationship between rail factors. The thing which determines whether or not he is prejudiced or preferred is the difference in the total river-rail transportation charges to Youngstown, on the one hand, and to his destination on the other."

Isn't it equally true, when you narrow that down closer than Youngstown and Cleveland, say narrow it down to [fol. 904] two industries in Cleveland, isn't the same thing true, that what determines whether one might be prejudice or preferred and the other discriminated against, is the total transportation cost to reach his plant with the commodity in which he is interested?

A. Well, of course, assuming the conditions to be the same and all the elements to be considered are the same, of course, (830) that is true.

Q. In other words, to have discrimination or prejudice you do not have to be separated by several miles of territory do you? It can be present as between two industries as well as between two communities?

A. I would have to admit that possibility.

(Narrative resumed.)

When I say transportation charges I mean transportation costs. Transportation charges become costs to the user of the commodity. I conceive transportation cost to be one thing and transportation charges to be another, depending upon the sense in which they are used. As to when one is the other, my cost study shows transportation costs. Our tariffs show transportation charges.

Say John Jones & Company, of Cleveland, shipped down the Ohio River through Mingo to Cleveland, the total charges they have to pay, river, elevation and rail, that becomes cost to the man who pays it. It is cost to the man who pays it and it is a charge which (831) is made by the various services, the people who engage in the service of getting it there, including the transfer.

[fol. 905] Q. Suppose John Jones & Company, being aggressive, provided their own river transportation, without paying anything to anybody as to what their cost is, but they move their coal to Mingo via their own facility, unload it by their own facility, pay the rail rate to Cleveland, the total cost to them is the same thing to them is it not, in their

bookkeeping, as the total charge or cost to another industry who had to pay for the full transportation service?

A. That is true. I think, however, that is entitled to the further consideration that the man who makes his investment in these transportation facilities on the river or what will you, is entitled to some profit on that by reason of the fact that he has been able to engage in it. I do not think that a man who does not have that should be foreclosed from having a rate which he can use because of the fact that somebody might be able to make a little more profit than he can.

Q. If he can parallel that river transportation himself economically at a cost to him less than the river rate charged his competitors he has that much of an advantage over his competitors, hasn't he, unless and until his competitors establish a like service for themselves?

A. That is true. At the same time, we must also give consideration (832) to the fact that he is taking a certain amount of risk in the transportation factor on the river, if that is what you have reference to. He is entitled to a profit on that.

[fol. 906] By Mr. Orcutt:

Q. *In* I believe it is the first report of the Commission at page 55 of the decision which is reported in 150, didn't the Commission say the river transfer facilities should be opened alike to all shippers and industries?

A. It *it* says that there—if that is what you say it says, that is what it says.

Q. That will not be true in this case, will it?

A. We propose to make our transfer facilities, which we will build if this rate is permitted, available to all shippers.

(Narrative resumed.)

That is not so at the present time and it would be almost absurd to expect that we would build a facility unless we had a rate. I do not understand that the Carnegie Steel Company will open up their facility to the public. I do not understand that it is their intention to abandon their facility for the transfer of coal and use our facility. The facility which we own will be opened alike to all industries and all shippers, but not the other. I do not think the Commission ever had in mind that they intended to go out and comman-

deer private facilities. I do not think the Commission had it in mind to arrange things so that anyone could get an advantage over his competitors either. That is the reason we want this rate. I don't know whether that was one of the reasons why they would not let the Pittsburgh, Lisbon & Western be build by the Pittsburgh Coal Company.

My present understanding is that it is required that we publish the 12 cent charge in the tariff. We (834) publish our transfer rate, our lifting rate at Huron I am quite sure. [fol. 907] I think it is required. We certainly intend to make it the same to all users of facilities. It is my impression that that is what we will do.

I understand the Carnegie Steel Company has no intention of permitting anyone else to use their facilities.

Q. I think I have just one more question and then I will have finished. In your cost study, which was offered here as Exhibit No. 44, and which was kindly sent out by Mr. Martin to Mr. Webber, and distributed by him among counsel, Mr. Martin said in his letter to Mr. Webber transmitting the study and dated August 19, 1931, as follows:

"In the preparation of the cost study recognized methods of determining unit costs and of their application to the service which will be involved in the transportation of ex-river coal, hve been followed except in those instances where more accurate results could be obtained by departure therefrom."

Will you indicate where in your exhibit, in the interest of accuracy you have departed from well-recognized methods of determining costs?

A. My recollection, Mr. Orcutt, is that that was put in to cover the distribution of freight operating expenses as shown (835) on page 3. I do not recall having seen a similar method of distributing freight operating expenses for the purpose of determining unit costs. As to whether or not that is a better way of doing it is a matter as to which opinions might differ.

(Mr. Durham temporarily withdrawn from cross-examination and by agreement of interested counsel Mr. J. E. Duffy, a witness appearing on behalf of protestants, heard.)

[fol. 908] J. E. DUFFY was called as a witness on behalf of protestants and after having been first duly sworn testified as follows:

Direct examination:

(836) The Witness: My name is J. E. Duffy; address, Butler, Pennsylvania. I am employed by the Receiver of the Butler Consolidated Coal Company in the capacity of Traffic Manager. I have held that position since August 1, 1930, previous to which time I was employed as Traffic Manager for the Butler Board of Commerce, and for nine years preceding that as Telegrapher and Station Agent by the Bessemer & Lake Erie Railroad Company.

The Butler Consolidated Coal Company owns eight high-volatile bituminous coal mines; six of which are being operated at the present time.

The locations of these six operations are shown by heavy black dots on a sketch map, which I desire at this time to offer as an exhibit.

(Protestants' Exhibit No. 83, Witness Duffy, received in evidence.)

The Witness: This sketch map was traced from an enlarged photostat of a section of "Junction and Terminal Point Map of C. F. A. territory," issued by Eugene Morris, Chairman, Central Freight Association. It will be noted from the (837) exhibit that all six of these mines, namely, Wildwood, Kincaid, Enterprise, Swartzlander, Argentine, [fol. 909] and Plumville, are located inland, with no possible way of arranging river facilities, and must depend entirely upon the railroads for transportation to markets.

The tonnage produced by these six mines in 1929 was approximately 1,200,000 tons, and in 1930 approximately 1,400,000 tons. Of these six mines, Wildwood Mine, located on the B. & O. Railroad at Wildwood, Pennsylvania is the largest. It began shipping in 1929, and in that year 500,000 tons moved out of this mine, while in 1930, 700,000 tons moved out from it. This mine is now producing approximately 3800 tons of coal per day, although it has an actual capacity of 8,000 tons per day. Inasmuch as Wildwood Mine carries Pittsburgh group rates into the territory here in issue, and is the only one of the six mines mentioned, now

shipping coal into that territory, we will confine our testimony to that mine.

The investment in Wildwood mine, including land, plant, tipple and all other equipment is approximately $5,000,000. The property consists of 4,000 acres of coal land, with approximately 45,000,000 tons of coal still available.

During the years 1929 and 1930 there was shipped into Cleveland, Ohio, Lorain, Ohio, and Canton, Ohio, a total of approximately 136,000 tons of coal, exclusive of coal shipped for bunkering boats, and lake cargo coal.

(838) This tonnage represents over 10 per cent of the total production of Wildwood mine for the two years mentioned. That to Cleveland and Lorain was rated at $1.84 per net ton, while that to Canton was rated at $1.59 per net ton. [fol. 910] The tariff here under suspension, W. & L. E. I. C. C. 1669, quotes ex-river rates from points on the River Division of the W. & L. E. Railroad, to Cleveland, Ohio and Lorain, Ohio $1.10 per net ton and to Canton, Ohio, 95 cents per net ton. Testimony offered by respondent's witness Durham, states that 12 cents per net ton is the estimated handling charge from barges to cars, while a purported quotation of 45 cents per net ton has been secured for movement of coal from the Connellsville District, via barge, to Mingo Junction, Ohio, one of the W. & L. E. ex-river origin points. Combining these factors we find that coal could be delivered in Canton, Ohio, from Connellsville district at $1.52 per net ton, while in Cleveland and Lorain, Ohio, delivery could be made at $1.67 per net ton.

The present all-rail rate from the Connellsville district according to evidence introduced by respondents to Cleveland and Lorain is $1.90 per net ton and to Canton $1.65 per net ton. These rates are 6 cents over the rates from Wildwood to the same destinations.

The use of river and rail transportation, as here proposed, would cause a reversal of this situation and give to (839) Connellsville district a 7 cents differential under us into Canton, Ohio, and a 17 cents differential under us into Cleveland and Lorain, Ohio. Obviously, such a situation, if permitted to become effective, would be an injustice not only to my company but to any other company operating inland mines.

Little mention, so far, has been made of what the delivered charge will be from mines in the Fairmont field. Here

again into the destinations mentioned Wildwood has a 15 [fol. 911] cents differential under Fairmont. This differential would probably be entirely wiped out by the establishment of ex-river rates.

I have prepared two maps which I would like to offer here as exhibits. The first shows the Allegheny and Ohio Rivers, the coal handling plants located on those rivers, and the points in Ohio at which river coal can be unloaded.

(Protestants' Exhibit No. 84, Witness Duffy, received in evidence.)

The Witness: I would like to offer the other map as an exhibit before making any comments on either one. The other map is a map of the Monongahela River showing the coal mines located along that river with proper markings as to whether such mines are equipped with river tipples or not.

(Protestants' Exhibit No. 85, Witness Duffy, received in evidence.)

(840) The Witness: The only purpose I have in offering these last two exhibits is to show to the Commission the facilities that are in existence and that by reason of those facilities being in existence a certain tonnage of coal is available and can be moved immediately by the rates here under suspension, and Witness Hannan, the Traffic Manager of the Corrigan-McKenna Steel Company, testified substantially to the effect that if the ex-river rates here under suspension become effective his company will transfer business now being received from Wildwood Mine to mines in the Connellsville district.

(Mr. Martin reserves the right to object to the last two exhibits if he should desire to after he has had a chance to examine them very briefly.)

[fol. 912] The Witness: A coal-producing company with mines situated as are our mines, can not compete in markets served by ex-river coal if the rates moving the ex-river coal are under the (841) all-rail rate.

My company is not fundamentally opposed to ex-river rates, as a general proposition. It is, however, opposed to any ex-river rate that will not permit it to move coal

to customers it now has into the territory to which the ex-river rates apply.

In this case we are firmly convinced that purchasers of our coal naturally will take advantage of the freight differential that will be brought about by the abandonment of these ex-river rates. To our mind there are two ways of straightening out such a situation. One is to have the ex-river rates on a high enough level to permit the inland operator to continue to ship into the territory or continue to sell in the territory.

The other alternative is to adjust the all-rail rate to the level of the proposed ex-river rate and still allow him to do business in the territory affected.

We believe the Commission in deciding this case should give very careful consideration to the situation of the inland operator.

That is all I have to say.

By Examiner Curtis:

I am not familiar with the Colona-Conway case. I was not with this company at the time. All I have learned of the Colona-Conway case I have learned in listening here.

[fol. 913] Cross-examination.

(842) By Mr. Fitzpatrick:

As to whether I oppose the publication of rates that would open up reasonable transportation routes in connection with joint rail-river routes, I do not oppose the publication of such rates if they are on a level that will permit us to do business in the same territory from an inland mine. My opposition to the particular tariffs or rates that are proposed arises from the fact that we feel that it would seriously affect the ability of our company to dispose of coal in these markets.

Our company or the mine operated is in the hands of receivers at the present time. This mine operation at Wildwood, Pa., opened up in December, 1928.

I am asked to explain the increase in output of the mine 1930 over 1929. It was in the period of—during the year 1929 in a period of opening up, you might say, and as time went on they (843) got further into the ground and they brought out more coal. The development in 1929 and 1930 was approaching more nearly the ordinary production.

As to whether I can say in comparison with our operations at other mines, no. At other mines they have been developed for several years. 1929, due to the fact that the mine was just opened at that time was really a subnormal year.

I referred to a quotation of 45 cents for towing coal over the rivers. That is the quotation which has been put into the record by the other parties.

[fol. 914] Our company tried to obtain some quotations but we could not get them. In other words, the barge operators would not quote a rate, in connection with the movement of coal from the Monongahela to Mingo to our company.

I am asked to state with reasonable accuracy the distance across (844) country from Wildwood to the nearest point on either the Allegheny or the Ohio Rivers. The nearest distance would be about 12 miles to the Allegheny, which would be Etna. There is no means by which our coal can reach that river. You would have to go over hills. It could not be done.

In discussing Exhibit 84, I referred to the points on the Ohio River as Steubenville and South as loading points for ex-river coal. I did not mean to say that there are facilities at those points for elevating coal from barges to cars. All that I put on there was the points listed in the tariff of the Wheeling & Lake Erie and I am not positive whether Bridgeport and Shadyside are listed in there or not, but the man who made this map for me, I observed after I opened it up here, has those two points. I do not know whether they are listed in the tariff or not. As to that portion of the map, it reflects merely an effort on our part to reproduce therein origin points as shown in the tariff.

By Mr. Orcutt:

When I attempted to get rates for river transportation or quotations, there was no reason given as to why they would not quote me. They said they could not quote us until the following week. I tried last week to get these quotations.

[fol. 915] (845) Examiner Curtis: Didn't they know that you were not on the river and could not use the river facilities?

The Witness: I do not know whether they do that or not. I did not explain it to the man from whom I asked the quotation.

(Narrative resumed.)

By Mr. Orcutt:

The company I sought the quotation from was the Union Barge Line Company.

By Mr. Martin:

When I saw that quotation I did not explain to them that I had no river coal to offer. I just asked them for a quotation. No reason was given for it at all, and there was no prospective traffic offered.

As to whether I went to them and said I had in prospect the movement of 100,000 or 200,000 tons of coal annually from some place, definite place, to one of the Wheeling & Lake Erie River division points, (846) yes, sir, to 250,000 to 500,000 tons is the way it was put to them, from Pool No. 6. I told them that we had that much in prospect. As to whether that was not so, I don't know. If we are going out of business at the Wildwood we have to make some arrangement. I don't know where we were going to get that 250,000.

I don't know whether the Union Barge Line Corporation is familiar with our operations. They are located in Pittsburgh, about 14 miles of our mining operation.

I would imagine that they would have some general knowledge of the location of mines along the rivers. I would presume that they know that our mines were not located on the river.

[fol. 916] I have spoken of shipping coal to Cleveland. We have shipped coal to Youngstown. (847) We are shipping coal to Youngstown now. I can not give you the tonnage. I am not familiar with it. I know it is a fair tonnage.

As to whether by "fair" tonnage I mean as much as goes to Cleveland, Canton, Massillon and Lorain, I do not know that there is that much. I would imagine it would be about 100,000 tons, annually.

I have heard it stated in this record that the protestants, the Pittsburgh & Lake Erie and the Pennsylvania propose to publish a rate of 77 cents per net ton, ex-river, from

Colona and Conway to Youngstown. I have heard the testimony in this record that the lifting charge at Martins Ferry and Mingo is to be 12 cents a ton.

I am asked to add those figures together and then add to it the figure which I have heard Mr. Osbourne give here. I think he had a quotation to the Wheeling & Lake Erie Railway Company of 30 cents a ton for towing from Pool 6 to Colona and Conway. The sum (848) of those figures is $1.19. The Pittsburgh rate to Youngstown is $1.34 per net ton. The difference is 15 cents per net ton. The difference I figured out in a similar way was 7 cents to Canton and 17 cents to Cleveland. In other words, this difference at Youngstown falls in between the figures of 7 cents for Canton and 17 cents at Cleveland which I have figured out as the disadvantage to which we would be put by the Wheeling & Lake Erie river-rail route, but we realize that there is not any escape from the fact that as soon as the Pittsburgh & Lake Erie and the Pennsylvania establish their 77 cents rate to Youngstown we will immediately be put at a 15 cent disadvantage there.

[fol. 917] Examiner Curtis: Will you be, because it is my understanding there is to be a transfer charge in addition to the 77 cents rate at Colona.

Mr. Martin: He has added that in 77 cent rail factor, 12 cents transfer factor and 30 cents water factor, which makes (849) $1.19 15 cents under the $1.34 all-rail rate.

By Mr. Martin:

That receivership does not have any relation to the river rail situation, but we are in receivership. I have not figured out what percentage of this is this 136,000 tons that go to Cleveland, Canton, Massillon and Lorain of our total production at all mines. I would say about 9½ per cent. As to whether the other 81 per cent or 80 per cent goes to points other than Cleveland, Canton, Massillon and Lorain, yes and no. Considerable of it goes to Lorain in lake business and in bunkering, but if you mean for track delivery, that is right.

All of these mines with the exception of the Wildwood mine lie outside the Pittsburgh District. The Kincaid and Argentine are in the Butler-Mercer District. They have no advantage over Wildwood on any rates eastbound. Westbound they have 5 cents into this particular territory;

5 cents advantage. (850) Northbound they have 15 cents advantage I think. I am not positive. Advantage over the Pittsburgh District. Wildwood is to the Buffalo-Niagara frontier points 10 cents under Pittsburgh.
[fol. 918] These other mines are under Pittsburgh. I am giving you the differential under Pittsburgh for the other mines.

I am asked about the mines which I have not yet mentioned by name. Plumville, Swartzlander and Enterprise take the same rates as Kincaid and Argentine. There is no Sykes mines. That is the junction between the Buffalo and Susquehanna and the Buffalo, Rochester & Pittsburgh. I have mentioned all of the mines now.

In the territory involved in this proceeding the advantage of Wildwood over Connellsville in railroad rates, west, north and east is 6 cents. (851) 6 cents to Cleveland, Canton, Massillon and Lorain.

From the Wildwood mine to Cleveland and Lorain the rate if $1.84. From Wildwood mine to Canton and Massillon—I believe to Canton alone—I do not think we have a rate to Massillon—$1.59. Connellsville is 6 cents over those in each case. I don't know the rate from Connellsville to Buffalo. Our rate to Buffalo is $2.14.

I have no definite information, either obtained in this hearing or elsewhere, as to what the towing cost of the Fairmont District to the Wheeling & Lake Erie river division points would be.

I heard someone mention that in the Fairmont District the river is (852) shallow and tortuous, that the locks are short, lock chambers are short and that the locks are close together and that that renders towing an exceedingly difficult and expensive proposition. I do not know whether it was Mr. Hoffacker or one of the other witnesses.

I have made no study to determine any reasonable towing cost from a point in the Fairmont District to a point on [fol. 919] the Wheeling & Lake Erie River Division.

I can not give you the computation whereby I estimate this 15 cent differential will be wiped out by the river rail rates.

I am referred to my map Exhibit No. 84 and to the right hand side of the map which is covered by the legend "Mines now equipped with river tipples" is Renoufs Beach.

I can not say whether there is a coal mine at Renoufs Beach. I have never seen any of these mines. As to how

I know that the Renoufs Beach mine is equipped with a river tipple, (853) the publication put out by the Rivers and Harbors Commission, Transportation Series No. 2, of the 1929 Edition, which is the latest available, has the maps just as I have them here in there and this is the information taken from that publication.

I have made no investigation to find out whether or not that was accurate, only to ask Mr. Hoffacker a question while he was on the stand, that was all. He did not give me any such information as is shown here.

The Valley Camp operation, the Kinlock mine, is an active mine. I do not know from any personal inspection whether that mine has been operating recently. I have the word of the traffic manager of the Valley Camp Coal Company. I have not seen it in operation. I can not say that the Kinlock mine is not actually located on the river but is inland on rail. I have never seen the mine.

[fol. 920] I don't have any record or any knowledge of any coal ever (854) having been dumped at this so-called Valley Camp river tipple. All I am going by is the information I got from the publication I have told you about. That contained no information as to any shipments from that point.

I understand from Mr. Hoffacker that Creighton across the river has been abandoned. If Mr. Hoffacker says that they never had a river tipple there so it could not have been abandoned, all right.

As to Barking Station. That is the same as Oakmont Mine of the Diamond Coal Company. I looked that up and satisfied myself that it was the same.

Harmarville is the same as shown on map Exhibit No. 58. I can not say whether Shippingport in the center of the map is an active mine or not. I can not answer the same question as to Wellsburg. (855) I just took them out of the publication as they were. I made the statement as to whether I will agree that possibly I have extended the Wheeling & Lake Erie River division too far to the south or to the southwest, I made that statement, that it is possible that the last two points named on there, Bridgeport and Shadyside may not be in there. I will rely on whatever the suspended tariff shows on that.

By Mr. Martin:

I am asked the source of my last Exhibit 85. (856) I got the map itself from the same source that I got the Allegheny and Ohio River map and the other information on the map; that is, the mines and so forth, is taken from a map prepared by the Baltimore & Ohio Railroad some two [fol. 921] years ago, I believe. I have the map that I got that from with me. Unfortunately, I left it in the hotel room. I do not know for what purpose the basic map was prepared. I don't know the name of the man who prepared it. Some Baltimore & Ohio man.

I do not remember the occasion for which it was prepared. I think that is indicated on the map but I can not recall.

I did not make any check of this map against either of Mr. Hoffacker's map exhibits introduced in this case. In the event they differ to any extent, I would not hesitate a minute to concede that Mr. Hoffacker's map is correct, because I believe the map Mr. Hoffacker put in is reliable. The only reason I put these in was I had these all joined together and (857) I did not like to tear them all out.

By Mr. Orcutt:

When I asked for this quotation from this towing concern, they did not ask me how much coal I had. They did not ask me who I was. We called them on the phone and told them who we were and what we wanted.

I believe we would produce as much coal on the Monongahela River as the Wheeling & Lake Erie does. I do not know what the Wheeling & Lake Erie has. I thought we had a right to get a quotation in order to determine what sort of disadvantage we were going to be put to. I did not — into consideration what the Wheeling & Lake Erie had there. I wanted to know how bad off we were going to be into Cleveland. Surely the fact that they produce no coal [fol. 922] and got a quotation would lead me to believe we had a right to inquire for one too. I caused the inquiry to be made. I do not know that I can give you the date. It was either Wednesday or Thursday of last week.

(859) I was here while Mr. Osbourne, General Manager of the Union Barge Line Corporation, was on the stand. I don't know whether it was during his testimony or not

that I called my superiors on the telephone and asked them to secure this quotation. It is not a fact. I don't think it was during his testimony. As to whether it is a fact that one of my superiors called Mr. Dann of the Union Barge Line Corporation, I don't know the name of the man that he called. At least I might have heard him, but I can not recall. I asked for a quotation and that is the report I got. I did not talk to anybody at the Union Barge Line. The negotiations were carried on between third parties at my request. The answer I got (860) was they could not quote until next week and I got no reason as to why they could not. That information came back to me indirectly through my office.

By Mr. Fitzpatrick:

I talked with the President, Mr. Hosford, in asking that a quotation be obtained. That is the same gentleman from whom I heard as to the results of the inquiry.

(Thereupon an adjournment was taken until 10:00 o'clock a. m. Friday, September 18, 1931.)

[fol. 923] (861) (Hearing was resumed pursuant to adjournment at 10:00 o'clock A. M., Friday, September 18, 1931.)

GEORGE DURHAM resumed the witness stand and having been previously sworn, testified in behalf of the respondents as follows:

Cross-examination (cont.).

By Mr. Fitzpatrick:

In connection with my Exhibit No. 2, I locate Herrick, Ohio, on our line just east of Adena, a point between Adena and Long Run. That point is on the main line and it is passed in the transportation of this ex-river coal.

Q. Suppose in publishing the rate from Mingo Junction to (862) Cleveland, for example instead of publishing a through one-factor rate you published an ex-river rate of 50 cents, let us say, from Mingo Junction to Herrick which applied only on traffic destined to Cleveland, for example,

and at the same time published a proportional rate from Herrick to Cleveland of 60 cents which applied only on traffic ex-river at Mingo Junction or at the Ohio River stations; would there be any material difference in that situation as compared with the results from the method that you selected in publishing the through rate of $1.10?

A. I don't think it is quite the same because in our publication we have started from the point where we receive the freight from the previous transportation. I think it would be most unusual to attempt to construct a tariff in that way or to construct a rate in that way.

Q. Let us approach it in this way, Mr. Durham. So long as the resulting charge of your company was $1.10 isn't it [fol. 924] really a matter of indifference as to how it applies?

A. I do not believe that it is from the standpoint of rate making. I think you might as well argue the same theory in respect to divisions of joint rates.

Q. Let us take it this way, Mr. Durham. Don't you think, and isn't it obvious, that a through rate is as effective as an aggregate of combinations of rates, whether you considered it from the standpoint of the charges collected by the carrier (863) or the charges paid by the shipper?

A. I don't understand. Will you please repeat that?

Q. Don't you think, and isn't it obvious, that a through rate is as effective as an aggregate of combinations of rates, whether you considered it from the standpoint of the charges collected by the carrier or the charges paid by the river, assuming, of course, that the through combination is the same as the one-factor rate?

A. Do you mean as effect- in respect of the shipper or receiver of freight?

Q. In respect of the carrier and in respect of the man who pays the charge.

A. I think in so far as the man who pays the charge is concerned he is only interested in the gross charge or total charge he has to pay. I do not conceive or understand that the carrier is primarily interested in how the rate is built up, but it is the total charge that interests him.

[fol. 925] Mr. Martin: You mean the shipper?

The Witness: Yes; I mean the shipper or receiver of freight.

By Mr. Fitzpatrick:

Q. So long as you collected for this through transportation service $1.10 it is also a matter of indifference to your company whether it is published as a through one-factor rate or the aggregate of two factors. Isn't that correct?

A. I do not agree with that for the reason that it is not (864) the same thing as publishing a division or a proportional rate.

Q. I am not talking about a division. I am talking about two proportional rates that would give the result which you hope to have, $1.10, and I am asking you what is the difference between that situation and the through one-factor rate of $1.10 which you have published.

A. The difference, as I see it, Mr. Fitzpatrick, is that in one instance we publish what is a true proportional rate, namely, a rate that applies from the point where you receive it from another haul, and in this instance you publish it between two hauls that you make yourself. I don't know of any principle which would justify the arrangement which you suggest. There may be principles with which I am not familiar. I do not claim to be a rate expert in every respect.

Q. I am assuming that the traffic would be handled through on the combination rate on the same trains that you would handle it on the through one-factor rate, it would be billed through, there wouldn't be any delay at Herrick. From the standpoint of transportation the service would be identical, and I am asking you if you see any difference [fol. 926] from the standpoint of your line if charges were collected upon the basis of a two-factor rate as compared with a one-factor rate?

A. I do not think the transportation would be any different if that is what you mean.

(Narrative resumed.)

There is really no difference whatever in so far as cost is concerned. We would receive the same charge, supposing we had a set up of that kind. It seems to me there is no rhyme or reason to the thing. As to whether there is any difference, I have answered as best I can.

I don't say I can see no difference from the standpoint of setting up the rate. I think it would not be the same

as putting in a proportional rate from a connection or from a point where the traffic had had a previous move, from the standpoint of rate structure.

I am asked if there would not be any difference from the standpoint of the charges which we would receive or from the standpoint of the service that we would render. You have said there would be no difference. Supposing that would be set up, there would be no difference in the amount we collected under that hypothesis and there would be no difference in the cost of rendering the service.

(866) It is also obvious that had we selected the two-factor basis of publishing this through aggregate charge of $1.10 it would be obviously unfair to consider either of the factors apart from the other in measuring the service that we render or the charge that the shipper pays from the standpoint of competition we would have to consider what the shipper would have to pay to determine whether [fol. 927] or not the traffic would move.

I would see no reason for considering either (867) factor in the building up of such a supposed rate in considering your service rendered or in making your charge to the shipper, if that is what you mean.

By Mr. Fitzpatrick:

Q. The point is this, Mr. Durham—and you certainly agree with this—that if you had selected the method which I suggest for publishing the through rate of $1.10 the fair thing to do would be to consider the through rate in connection with the through service and not one of those two factors which comprise the through rate. Isn't that obvious?

A. In so far as rail transportation is concerned that is obvious.

(Narrative resumed.)

By Mr. Fitzpatrick:

(869) It is true that the Wheeling & Lake Erie along with other carriers has applied to the Interstate Commerce Commission for authority to increase freight rates 15 per cent as a means of producing increasing revenues.

I think it is also true that after the petition to that effect was filed with the Commission, the Commission asked the

(870) executives of the different lines if they intended to make any exceptions in respect of the increase sought. Where the different lines held the view that exception should not be made in respect of the increase, I don't remember that the Commission sought a written concurrence of the executives of each individual line to the effect that that [fol. 928] line had no intention of making any exceptions in applying the increase.

Q. Assuming that such written concurrences were filed with the Commission and that one such concurrence was filed by an executive of your company, doesn't it follow that the Wheeling & Lake Erie executive held the view that a 15 per cent increase should be applied to coal rates as a means of yielding additional revenue on that traffic?

(Mr. Martin objects, and after discussion the following occurred:)

(877) Examiner Curtis: In other words, you are perfectly willing (878) after having been given an opportunity to make sure whether or not Mr. Duncan, the executive of this respondent, did or did not sign. And after he comes forward and states whether it is or is not the fact, then we can proceed along the inquiry.

Mr. Martin: Yes; I am willing to make that fact clear one way or the other in the record and then allow Mr. Fitzpatrick to examine Mr. Durham further on it, subject, of course, to the ordinary objections for relevancy, competency and so forth.

Examiner Curtis: Is that satisfactory?

Mr. Fitzpatrick: Yes, sir. I expect a number of objections.

Examiner Curtis: Then, let us proceed with something else.

(Narrative resumed.)

By Mr. Fitzpatrick:

On my Exhibit No. 1 there was no special point in providing a minimum weight so low as 25 tons a car. My recollection is that that was put in because it is a customary provision in the coal tariff. That is my recollection of it.

[fol. 929] I am not sure of the minimum weight in connection with the rates from the all-rail fields.

As to whether it is a fact that under a minimum weight of 25 tons the shipper could load the barges of coal which we hope to handle in twice as many cars as we anticipate, based upon (879) our cost analysis, we would not haul very many cars for them.

I do not understand that after publishing a rate and after a shipper offers traffic to handle on that rate that we are at liberty to turn it down at our pleasure. As a practical matter I know we would not be hauling cars very long with only 25 tons in them, particularly if we had charge of the transfer plant and particularly if we are dealing with the class of people we are dealing with here.

[fol. 930] We would have charge of our own plant and the Carnegie Steel Company is a reliable organization, and they will not resort to things of that kind. That is not their practice.

I would not say that we are willing to make a very generous tariff where we are dealing with reliable people, and we might be more strict if dealing with questionable people. My answer goes to your point that our costs as represented here will be probably increased by the manner in which coal will be loaded. Now, that is not correct.

It might be true that increased carload minimum weights tend to produce higher average loadings. (880) I think that fact is accepted by everybody in the railroad business. I don't know whether it will work out or not. I think it would be generally accepted.

I am asked to refer to Exhibits 30 and 31 showing barge or river equipment of the Hillman Transportation Company and the Carnegie Steel Company.

I do not understand that that equipment is appropriated exclusively for the carriage of coal traffic. I stated in my direct examination that they had at times some, or I understood that at times they had some surplus capacity in their transportation department, that is, river transportation department.

(881) I am asked to refer again to Exhibit No. 30. I do not understand that the equipment therein described is used exclusively in the carriage of coal. I don't know that [fol. 931] the equipment of the Carnegie Steel Company described in Exhibit No. 31 is used exclusively in the trans-

portation of coal. I believe it is used for other traffic in addition to coal.

I am asked to refer to Exhibit No. 32.

Q. Suppose there should be some congestion on the river or for some other reasons the Carnegie Steel Company would wish to dump the coal from the barges onto their own property and thereafter load it into cars for carriage to Cleveland; the ex-river rate would certainly apply in connection with such a haul; isn't that correct?

A. I would say that as a practice we would not permit that to be done, because it might lead to bad practice.

(Narrative resumed.)

As to how we can prevent it under our tariff, Exhibit No. 1, if it were permitted to become effective, we would simply have to police it so it would not happen. (882) That is the same reliable company. In other words, if they loaded the coal from the coal loading machine right onto the ground and afterwards loaded it into cars it carried over our line, we would endeavor not to apply the ex-river rate. I would consider that it had been stopped. That is my present judgment in the matter.

As to how much of a delay we would permit between the movement from the barge to the car before we would consider that there had been so much of a delay that it could not be handled on the ex-river rate, I should consider that the coal should be unloaded directly from barges to car. If this unloading machine were altered in such a way as to provide [fol. 932] overhead bins such as are shown in some of the river tipple loading machines pictured in my exhibits, and suppose after such an alteration the coal should be carried from the barge through this Mingo Junction machine overhead into the storage bins and should be loaded from the storage bins into the cars, I would think that would be a direct operation. I would not say that if the coal was topped for a half an hour in the (883) bin it should be considered as not moving directly.

From the standpoint of the application of a rate, I don't think there is any material difference as to whether the delay be one-half hour or two days. I simply used a half hour to indicate that you might go to the extreme and say that the five minutes that you wait for a car to be dropped down during the day there is coal in the bin would be considered a

stoppage. I would not consider that a stoppage. If coal were unloaded on the ground and stored, I would say that that was a break in the transportation. If suppose they should alter this plant by extending bins over the ground to the left of the loading machine as we look at it, I am asked if the ex-river rate would apply as to coal handled through those bins. If it was handled direct from barges through the bins on to cars I would say it would apply.

I am asked to assume first that the coal would move through the machine into the bins and would stay in the bins two days and should then be loaded into the cars. If it were a direct movement and not storage or not stoppage I would say that it was proper to apply the rate.

[fol. 933] (884) If the coal was left in the barges and if it had moved partly under a tariff restricting the origin point, if we had a manifest showing that it had moved and that that was the coal and that it was bona fide, then I would say if it was stored in the barges we would have no way of reaching it and prevented it being stored there, and we would have to take it and transfer it and ship it. I think that would be a proper move.

If suppose this same reliable company should delay the coal on their own property in bins and then offer it for transportation and assert or certify to us that it was ex-river coal, I do not believe that to be a proper application. That is my present judgment in the matter of the ex-river rate.

As to whether we ever handle any coal by rail into the Mingo Steel plant, there might be a few cars, very few, if any. I don't remember about it. It would be a very small number of cars.

I have stated already in the record that the coal equipment appearing in Exhobot No. 32 left foreground is private equipment of the Carnegie Steel Company.

I am asked if it isn't a fact that a number of coal operators have their own cars which are used in the carriage of coal over our line. Very few any more. There are some.

The Clarkson Coal Company does not have any of their own equipment which is carried over our line. I can not think of any now. The Goodyear Company at Akron may have some. I am not making the statement that they do, but they did have some at one time. (886) I am asked to [fol. 934] assume first that the steel company at Mingo Junction has equipment which is suitable for the carriage of coal

within the limits of their own plant. I think that is a safe assumption.

I don't know if that same equipment is suitable for the carriage of coal over our line of railroad. It may or it may not be.

I am asked to assume that the equipment were suitable for carriage over our railroad and the Carnegie Steel Company should load this coal into their own cars. I would apply the ex-river rate on coal moving in such cars.

I think very probably the equipment shown on Exhibit No. 32 is Carnegie Steel Company equipment that you see to the left of the photograph, apparently loaded with coke. While transportation in private cars over our line is entirely possible, if not probable, under the rates which we have proposed, we have not taken into consideration per diem or car hire charges in computing our costs.

(887) Examiner Curtis: Now, since you have made that inquiry Mr. Fitzpatrick, would the mileage on private cars used for coal be considerable?

Mr. Fitzpatrick: Will the witness answer?

The Witness: It will not be very much. I would like to furnish for the record the cost if we moved it in private equipment of the Carnegie Steel Company. I don't now remember the mileage rate for cars of that kind. The per diem rate, of course, would not apply. My present impression is that they lower the cost. I think I would be very glad to furnish it.

[fol. 935] By Mr. Fitzpatrick:

I was not in error in emphasizing the fact that the use of our own equipment brought about a saving in per diem and car hire charges. There is no considerable quantity of private equipment available for use in the transportation of this coal. That is absurd.

(888) Examiner Curtis: Opportunity will be given to him to furnish any supplemental information regarding the cost and extent of use of private cars on a mileage basis in connection with this coal traffic. That can be done before the close of the hearing, I take it?

The Witness: Oh, yes.

(Narrative resumed.)

I do not know the basis upon which the allowance would be made to the Carnegie Steel Company for such equipment. I have forgotten the mileage basis that is provided for. I will furnish it.

By Mr. Fitzpatrick:

Q. Mr. Durham, I will ask you if there is a saving in the use of your own equipment in this traffic as compared with the use of private equipment?

Mr. Martin: I do not see how he can answer that, Mr. Examiner, until he knows what this charge or payment for private equipment is, which he says he does not have accurately in mind at the moment.

(889) Mr. Fitzpatrick: Then I will ask the witness the basis for his direct testimony, which was to the effect, as I understand it, that there was a considerable saving because of the fact that the Wheeling & Lake Erie equipment could be used in this service.

Mr. Martin: As compared with equipment of other carriers.

[fol. 936] Mr. Fitzpatrick: I do not understand the witness made that distinction.

Examiner Curtis: It appears now, Mr. Fitzpatrick, that he did not take into consideration any use of the so-called private car in his cost study but his opinion went solely to the use of his own equipment as compared with that of connecting line carriers.

The Witness: And that is so because of the practical situation. Very few of these private cars are in use on our line. In my opinion, there is not the slightest probability that they will be used in the handling of this traffic.

(Narrative resumed.)

(892) By Mr. Fitzpatrick:

Our line has not made any great extensions in the way of coal equipment since 1925.

I am asked whether on car hire costs for additional coal traffic am I not the same Mr. Durham who testified for the Wheeling & Lake Erie in the Cargo Coal Cases of 1925. You know I am.

I am asked whether I recall giving any figure there as to

additional cost per ton for the additional coal that was assumed might be moved over our line, if it were handled in private equipment. I don't remember what was said there. If it were suggested it was 22 and a fraction cents per ton that would not recall anything to my mind. I would want to see the record.

I am asked whether in the matter of car hire the cost would tend to decrease as the prospective tonnage grew up towards millions of (893) tons or would it tend to diminish with the additional tonnage. The matter of car hire depends upon so many factors that I think it would be rather difficult for [fol. 937] me to give a direct answer to that question. Do you mean hire of equipment or the cost for the use of equipment?

Q. For example, if there was any prospect for your company of an additional tonnage of coal, we will say, 500,000,000 tons as compared with 250,000 tons, and all of the prospective coal were to be moved in equipment not owned by the Wheeling & Lake Erie, as to which tonnage would the car hire factor per ton become a bigger factor?

A. My understanding is that you are assuming that we have exactly enough equipment to handle 250,000 tons and that we are intending to——

Q. No; I am assuming as to the 250,000 tons it would move only in equipment not owned by the Wheeling & Lake Erie and also the 5,000,000 tons would be handled exclusively in equipment not owned by the Wheeling & Lake Erie.

A. The hire of equipment undoubtedly would be more to handle 5,000,000 tons than it would be to handle 250,000 tons.

Q. Would it mean more per car for the greater tonnage than for the smaller?

(894) A. No; it would be the same if — were paying one dollar per day per diem for the use of cars. The hire of equipment price would be the same, the same one dollar per day, and the more cars you used the more dollars you would have to pay.

By Examiner Curtis:

Q. In connection with your supplementary statement that you have leave to file I would also like to have information as to whether or not it will show your total cost figures to any material extent?

[fol. 938] A. We will furnish that.

Q. I think I have already indicated that I am trying to obtain, if possible, total figures that we can regard as reliable in this case.

Mr. Fitzpatrick: I will drop that line, Mr. Examiner, until the additional data are supplied.

(Narrative resumed.)

By Mr. Fitzpatrick:

I would not say that it is true that Ohio No. 8 coal originating on our line to some extent moves east towards Pennsylvania and West Virginia or through those states further east. I don't remember any movements now of coal east through Pennsylvania and West Virginia. I will be glad to check that and furnish you with the information.

I am asked if it is safe to assume that there are some movements eastbound from our Ohio No. 8 field (895) to any points east of the Ohio River. There are some movements to Buffalo and that immediate territory, or there have been some movements. Now, as to points in Pennsylvania and West Virginia I would not want to assume that without check.

I am asked to refer to my Exhibit No. 46.

Q. As I understood your testimony, Mr. Durham, you had expectations of handling coal on this ex-river rate to public utility companies at Cleveland, for example?

A. Did I testify to that?

Q. It is not necessary to go into it at great length, but I understand in distinguishing the uses which might be made of Connellsville coal as compared with Ohio No. 8 coal you emphasized some uses by public utilities—perhaps companies that also turn out by-product of some sort, tar, [fol. 939] or something like that. (896)

A. All of the by-product coke ovens, as I understand it—I cannot tell you all of the products that come from by-product coke ovens, but my impression is that tar is one of the products. And that is probably produced at all of the by-product ovens that we have shown in existence on our line.

(Narrative resumed.)

The public utilities companies, light and power companies, use steam coal. I am familiar in a general way

with the locations of those companies in respect of railroad sidings. I know that they are located, generally speaking on the lines of other companies, and the switching charge at Cleveland to those public utility sidings is 20 cents per ton.

(897) If I made a statement to Mr. King that there was a loading plant for the transfer of coal at Steubenville, then I wish to correct that, because I did not intend to make it. I know of no such plant.

The fact is that the only available loading plants at the present time are at Mingo Junction and Martins Ferry, Ohio. If I admitted in my direct examination that there was possibly one of the Wheeling Steel Corporation at Steubenville, I wish to correct it. I feel quite sure that I did not.

(898) Mr. Fitzpatrick: Assuming, Mr. Durham, that Mr. Adell showed the average distance from Mingo Junction and Martins Ferry to Canton and Massillon as 87 miles and the average distance from Mingo Junction and Martins Ferry to Cleveland and Lorain as 152 miles, showing a [fol. 940] difference between the two averages of 65 miles, can you mention a single existing rate standard or a single rate adjustment prescribed by the Commission which for like differences and like distances would justify merely 15 cents over the rates you propose to publish to Massillon and Canton?

(Objected to by Mr. Martin and after discussion, with the second reading of the question, the objection is sustained.) (900)

Mr. Fitzpatrick: May I suggest this, Mr. Examiner? This witness was asked merely in effect if he knew of any standard recognized by the Commission or effective in any rate adjustment which had been prescribed by the Commission which would justify such differences.

Examiner Curtis: He may answer that yes or no, if he can.

Mr. Fitzpatrick: That was my question. He went to great lengths as to the theories of rates and he qualified as the vice president in charge of traffic.

Examiner Curtis: He may answer that yes or no, if he knows.

The Witness: I don't know. I have not had an opportunity to examine the decisions of the Commission to test that point.

By Mr. Fitzpatrick:

Q. Then, in arriving at the rates which you propose you did not consider anything of that character?

A. I do not know that there are a lot of rates from the Crescent fields where the mileage difference in proportion to the difference in cents is greater. I cannot give you the specific ones, but I took those into consideration at the time.

Q. Will you please limit yourself to my question? My question assumes rates which are for distances equal to those which I mentioned and where the difference is equal to that which I mentioned.

[fol. 941] A. I answered by saying I do not know of any specific rate passed upon by the Commission where the distances were the same and the differences in rates the same.

Q. Then it follows, as I understand your statement, Mr. Durham that in arriving at the ex-river rates which you propose you gave no consideration to such data at all?

A. I think that is an incorrect conclusion. I do not believe it follow- from the answer that I said I did not know of a single instance of that kind. And then you say I gave no consideration to matters of that kind in the construction of these rates. I do not agree that the conclusion follows.

(Narrative resumed.)

As to what existing rate adjustment and rates difference we would consider which justify such differences, I cannot give you any specific thing that we used in that particular connection. The specific rates we looked at have slipped away from my mind.

I am asked to refer to my Exhibit No. 57. In elaborating upon that exhibit I referred to divisions from which I went on to conclude (902) that the tonnage dumped over these particular coal loading stations at Sandusky, Huron and so forth, moved over particular routes from the coal fields to those points. It is also correct that when I prepared this exhibit I had no detailed information as to the routes over which the traffic did move. The only informa-

tion that I had with respect to the routes over which the coal moved was, I think, given in my statement.

[fol. 942] It is also correct that the source of the information shown in Exhibit No. 57 merely purported to show the lines' facilities at destination over which the coal was dumped. That source did not show that coal dumped by the Pennsylvania at Ashtabula was actually handled over the Pennsylvania line to Ashtabula.

(903) As to whether it might have been switched to the Pennsylvania Railroad at that point, that could have been possible so far as this statement is concerned. I am not sufficiently familiar with the arrangement between the Buffalo, Rochester & Pittsburgh and the Delaware, Lackawanna & Western to know whether they have dumped considerable bituminous coal. The Delaware, Lackawanna & Western serves bituminous coal fields through connections. I see this coal originated apparently on the Buffalo, Rochester & Pittsburgh and they might have gotten a line haul on it. There is a lot of coal dumped at the lake front that is not originated by the carriers that dump it. It is possible that they might have received the coal at Buffalo from the Buffalo, Rochester & Pittsburgh. Most of these carriers serve Buffalo.

On cars of coal that would be loaded at the Mingo Junction facilities of the Carnegie Steel Company, those cars would be weighed on our line at Brewster. (904) There are no weighing facilities on our river division between Martins Ferry and Steubenville.

I am under the impression that the Carnegie Steel Company do not have weighing facilities at this transfer plant, although I would not make a definite statement about that.

[fol. 943] I am asked to assume that we received carload traffic at Martins Ferry destined to Steubenville, Ohio, which ordinarily would entail a movement over the river division only, and assume that such traffic had to be weighed on railroad scales, and if we would run that car over our line up to Brewster for weighing purposes and back to Steubenville, the destination. We will have no different situation with this tariff in effect than we have now.

We do not have any scales on the river division for weighing. If we were in a situation where we had to get it to a scale before we could take a connecting line's weight, or if we could not get a weight of the industry and just

must have (905) our own weight, we would, of course, take it to Pine Valley. But I cannot conceive of such an absurd situation.

As to the traffic between Martins Ferry and Steubenville, we might have a situation where we take for one shipper and use the private scale owned by another to save us an extra transportation service. I would not say that we have never done that. That is probable. It does not happen often that the scale at Brewster would be out of Commission. There are two scales there, so that one would be available.

Every day they are working, active mines in Ohio No. 8 fields would receive a switch.

It is very probable that trains shown on Exhibits 40, 41, 42 and 43 handle some Ohio No. 8 coal at the present time.

It is correct that beginning with Exhibit 40, for example, where I show gross tons, average Note DI arrive at those averages by taking the daily average gross tons of the trains moved in June, 1929, 1930 and 1931.

[fol. 944] (906) I am asked to refer to the third block on Exhibit No. 40 where I refer to Pine Valley to Jewett. I have No. 85 first and 85 second. They are regular trains scheduled for operation over our line. I did not arrive at our cost by filling out those additional trains.

I do not remember the exact schedule for trains 85 and 85 second to run or departing time. They are run more or less at the convenience of the traffic within reasonable limitations.

Our cost studies are not based upon assumed economies that arise from filling out the trains that are now schedules over our line. Not in any particular or in any respect.

I am asked why as to that particular movement, for example, Pine Valley to Jewett I show 85 first as taking on additional tonnage of 1540 gross tons. It does not quite fill out that train based upon our computations here.

(907) For the purposes of our study, it gives that train the tonnage which we show it handled. It is not my point there there is no economy that results from filling out these trains.

It is true that our costs are less by placing the 1540 gross tons on that train than by permitting 85 first and 85 second to run as they are scheduled and put on a special train to handle the coal. But our cost was not determined from

those trains. Our cost was determined from trains run in 1929 and 1930.

As to why we should run train No. 85 second over our line from Pine Valley all of the way up to Brewster when it is apparent that the tonnage which it carried could have been combined with 85 first and have one train operate, we have to do that in order to maintain our service both from Terminal Junction and from Mingo Junction and to make [fol. 945] the service prompt.

(908) Giving consideration to the matter of service, the first point at which the traffic from those different lines, north and south of Warrenton, can be combined economically is Brewster.

I did not say that you were wrong in assuming that there were economies in adding loads to a train that is not filled out. I did not say that there was no economy in that or that your statement in that respect was incorrect. I did say that our cost calculations were not dependent upon that kind of an operation and that they were determined from performances for 1929 and 1930.

We did not make our cost figures based upon the operation of the loading plant at Martins Ferry, as to which the loading of cars would require an outbound movement over a period of three days. There are no cost figures that included the operation at Martins Ferry. Yet if that plant were loading cars at maximum capacity, it would require more than two days before the six barges could be transferred into cars.

(909) I am asked if the Carnegie Steel Company should load the bins which I assumed in my question some time back and should be given the benefit of the $1.10 rate, they could feed that coal to our line one car per day. If we assume all of the things that you have related it is possible that they could do that. It would not alter our cost exhibit in the least. There is economy that results from filling these trains out almost to capacity as we have done, based upon the facts that I have computed. I can reconcile it by the fact that our unit of cost were determined from the [fol. 946] performance in 1929 and 1930 and applied to the gross ton miles produced by these trains, the operation of which I have described. And it is a cost per gross ton mile and has nothing to do with loading of these particular trains.

Our cost- every day during each of the three months were not identical. The actual costs on those days were not identical. Of course, they were not.

(910) They differ from day to day. They will vary as to loading of cars, as to the loading of trains, and other things that might be mentioned.

I am asked to take the total gross tons for each of the seven blocks, the averages under column 4, shown on Exhibit 40 and give the highest and the lowest gross tons at each of the points during that period. I will be very glad to supply that for the record. The highest and the lowest of the gross tons for each of the seven blocks.

(911) I testified for the Wheeling & Lake Erie in the Lake Cargo Coal Case in the early part of 1924. My recollection is that the style of the case, if that is the correct way to designate it, was Lake Cargo Coal Rates of 1925. Our line was carrying a great deal more coal then than it is now. I don't remember making a statement in that proceeding, as my opinion, that a rate for a sum equal to $1.14 would not cover the direct cost to the Wheeling & Lake Erie of transporting coal from Ohio No. 8 to Huron. [fol. 947] There is handed to counsel and to me afterwards what purports to be a part of the record in Docket No. 15007, pages 2244 and 2245 and I am asked if I have been correctly quoted. I will read the sentence referred to by Mr. Fitzpatrick, as (912) I understand it.

"I am exceedingly skeptical whether a rate of $1.14 would pay the direct cost of transportation." That is page 2245.

I have not had experience in the way of making rates of anything of that character, except the experience I have had since I have been with the Wheeling & Lake Erie, and that has been of a supervisory character, entirely. My participation in the making of rates has been limited to discussion with the traffic department with respect to matters of that kind.

By Mr. Orcutt:

I am asked if it was my idea that an all-rail (913) rate where it follows a movement by barge on the river should be lower than if it had not been preceded by a river haul. I think the situation may justify a proportional rate lower

than a local rate when it is made in connection with a water line movement.

By Examiner Curtis:

Q. The real magic of it, if anything, is whether or not the coal will move by means of a slower water transportation to a certain point and then continue the movement on by rail to an ultimate destination as compared with the more speedy all-rail movement. Isn't that it?

A. That is right.

[fol. 948] (Narrative resumed.)

By Mr. Orcutt:

I am asked if it is my view that traffic moving from A to B can move either all-rail or move from A to X by river and then from X to B by rail, that where it does move to X by the river it is entitled to a lower through charge than if it moved all rail. I think there are conditions under which that is true. (914) I would not want to go so far as to say that in all cases that is true or that even in the majority of cases that is true. I do say that I believe there are situations in which that is true and proper, and I think that this is one of them.

I would not want to make a general answer as to whether it is my view that an inland mine, not having access to a river should take a higher rate to the ultimate destination than a mine having access to a river where a part of that movement from that mine may be via barge and river. I think that is a matter which should be decided upon the merits of the situation as they might exist.

I would not say that I think every situation of that kind deserves prolonged investigation. I think the people responsible for making the rates should take that into consideration. The people who serve the inland mines and the people who serve the river mines, if they are both, I think must certainly give some consideration to that. I would not say that it is always true that a situation like that is just full of potential injury to those connected with it except those who are getting the advantage.

[fol. 949] (915) I would not say that that is generally true. It might so happen.

Redirect examination.

By Mr. Martin:

On the last question of Mr. Orcutt's I believe the same factors were present in connection with the establishment of the ex-river rates through Colona and Conway to Youngstown, and the railroads there. The Pennsylvania and the Pittsburgh & Lake Erie, who agreed to establish an ex-river rate to Youngstown through those ports are among the protestants here.

So far as I can see, it seems to me the two situations are approximately the same as to the matter of preferring the river mines (916) to inland mines.

Taking up my cross examination from the beginning where Mr. King asked me some questions on Wednesday, as to whether or not the gain which the Fairmont district had made in shipments of coal to Cleveland, Canton, Massillon and Lorain for the year 1930 as compared with the year 1926 was at the expense of the other Crescent districts, I stated that it was. I asked if it is not equally proper to assume that this gain was largely at the expense of the mines on the Wheeling & Lake Erie in the Ohio No. 8 district. That statement is equally true. Exhibit No. 3 shows that in 1926 the Fairmont district shipped to these four destinations 427,994 tons of coal and in 1930 shipped to the same destinations 1,236,400 tons of coal, a gain of 808,406 tons. In 1926 the Wheeling & Lake Erie shipped from mines on its lines in the No. 8 Ohio District to these four destinations 1,216,576 tons of coal, while in 1930 it shipped but 517,676 tons of coal, a decrease of 698,900 tons. [fol. 950] (917) I am asked if as a matter of fact did not the Crescent districts increase their shipments to these four destinations each year over the year 1926 until the recession which occurred in the year 1930. Yes; that is true, as shown in the next to last group of totals in the lower right hand corner of the exhibit. For example, the exhibit shows that the total shipments from the Crescent districts to the four destinations for the year 1926 was 8,342,422 tons; that these shipments had increased steadily until 1929 when it amounted to 9,904,817 tons; that in 1930, which was a year of severe industrial depression they decreased to 7,454,875 tons, or about 10 per cent under the 1926 total. Mr. King's question could only apply to the year 1930 as that was

the first year when the shipments for the total Crescent districts fell below 1926.

I am asked to refer again to Exhibit No. 3 and state whether during the period 1926 to 1929 both inclusive the Wheeling & Lake Erie's tonnage from the Ohio No. 8 district to Canton, Cleveland, Lorain and Massillon was steadily fallin- while the tonnage from the Fairmont district to the same destinations was steadily rising. That is correct.

I was asked by Mr. Orcutt as to the possibility of towing coal from mines on the Kanawha River to our River division stations.

(918) The width of the Kanawha River varies from 600 feet in the upper portions to 700 feet in the lower portion. It is improved with ten locks and dams with single chambers. The six lowest dams have chambers 313 feet long and the remaining dams have chambers varying in length from 271 feet to 274 feet. The existing project provides for a six foot navigable depth from mouth to a point 90 miles above.

[fol. 951] This depth is considerably less than the depth prevailing on the Monongahela, Allegheny and Upper Ohio Rivers. The depth of the Monongahela River is 8 feet up to lock 10 and 7 feet above lock 10. The Allegheny River has a least slack water depth of 7 feet to a point about 45 miles above its mouth; and the upper Ohio River has a least slack water depth of 9 feet. It is apparent, therefore, that on the Kanawha River barges could not be loaded as heavily as on the Allegheny, Monongahela and Upper Ohio Rivers where the depth is much greater. This would, of course, tend to make the cost per ton mile for towing coal from mines on the Kanawha River greater than the cost of towing coal from mines on the Allegheny River or from mines below lock 10 on the Monongahela River.

It should also be noted in connection with the possibility of coal moving from the Kanawha River that it must move approximately 200 miles, that is from Point Pleasant to our River Division stations up river, against the current in the (919) Ohio River, in the winter time against the running ice, and in the spring against the high water caused by the usual spring freshets.

I am asked what is the distnce via river from a representative mine or group of mines on the Kanawha River to Mar-

tins Ferry and Mingo Junction, respectively. The distance from Coalburg, which is a representative point on the Kanawha River to the mouth of the Kanawha River at Point Pleasant, W. Va., is approximately 75 miles. The distance up the Ohio River from Point Pleasant, W. Va., to Martins Ferry is 176.4 miles and to Mingo Junction 192.4 [fol. 952] miles. This would give a total water haul from Coalburg to Martins Ferry of 251 miles and to Mingo Junction of 267 miles. A moment ago I gave the round figure of 200 miles from the mouth of the Kanawha River to Mingo. The exact mileage as taken from Government records is 192.4 miles.

I was asked some questions by Mr. King and by Mr. Orcutt concerning the application of the proposed ex-river rates on coal dumped into barges at mines having river tipples in the vicinity of Moundsville, W. Va., and I later stated that if the Commission upon consideration of the record in this (920) proceeding felt that the rate which we propose should be restricted to apply only to coal moved to River Division points by river from mines on the Allegheny and Monongahela Rivers that I would file a supplement to the suspended tariff so restricting the application of the rate, provided similar action was taken by the Pittsburgh & Lake Erie and the Pennsylvania in connection with their proposed ex-river rate to Youngstown and related points. I am asked if that is done how would I propose to police the transfer of coal at Mingo Junction or Martins Ferry to insure the restricted application of the rates to coal from the river mines on the Monongahela or the Allegheny Rivers. I would purpose to require the shippers of coal from those rivers to produce a manifest showing where the coal had originated and such information as is necessary to enable us to definitely determine the terms of the tariff are not being violated. This would be handled by our agents and the agents' force at such points as coal might be transferred from barges to cars.

[fol. 953] In my opinion I don't believe that there would be any complications or unusual difficulties in handling the matter in that way.

(921) The all-rail rate to Cleveland from mines on the West Virginia side of the Ohio River immediately opposite our River Division is $1.74 per net ton.

Q. You have stated that if the proposed ex-river rate of 77 cents per ton from Colona and Conway to Youngstown were projected to Cleveland, the rate would probably be $1.25 per ton. Assuming this to be a fact and assuming further that the transfer charge at Colona or Conway would be 12 cents, how much would be left out of the $1.74 rate from these West Virginia mines to Cleveland to cover the water movement from these mines to Colona or Conway——

(Mr. Orcutt objects.)

(After discussion, Transcript pages 922-931, the following occurred.)

Examiner Curtis: You have my assurance now that within reasonable limits and within the rules of evidence you will have all the opportunity you desire, when you come to put in your case, to go ahead and theorize some, if you want to, and get what facts you can into the record. And I want them to have the same privilege.

Mr. Orcutt: And I might add, Mr. Examiner, that we hope before we get through with our case that there may be some (932) question in the mind of the Examiner as to whether the Colona and Conway decision was correct, that is, the level, all of which will indicate what we were talking about the other day, and that is the necessity of a general investi- [fol. 954] gation of these ex-river coal rates; and it will be obvious when we are through and we know you would welcome any evidence that would convince you you were wrong, if you were wrong.

Examiner Curtis: The situation is just like this: When we had the Colona and Conway case we had something that we had never had before. We did the very best we could with that.

Mr. Martin: I do not understand that this is in any sense a retrial of that case.

Examiner Curtis: Not at all.

Mr. Martin: Or that evidence which would be admissible only in such a trial would be admissible here. I merely want to make that observation.

Mr. Orcutt: You are correct, Mr. Examiner.

Examiner Curtis: The decision in this case must certainly stand upon the record and the facts in this case.

Mr. Orcutt: We do not intend to retry the Conway case here, Mr. Martin, I don't want you to get that idea.

Examiner Curtis: Of course, the Commission always has and always will, I suppose, take judicial notice of what it has done in other cases of a similar character.

(Recess was taken until 2:15 o'clock p. m.)

(Met pursuant to the taking of the recess at 2:15 o'clock p. m.)

Redirect examination (Cont.).

By Mr. Martin:

Q. Mr. Durham, just before the noon recess I had asked you a question which called for a certain calculation relating [fol. 955] to a probable rate to Cleveland ex-river through Colona or Conway. Before re-asking that question I wish to put a preliminary question.

In connection with this matter of establishing proposed rates from your proposed River Division stations to Cleveland and other stations in northern Ohio, did you give consideration to rates on ex-river coal which might be established to the same destinations by the Pittsburgh & Lake Erie and the Pennsylvania Railroads through Colona and Conway.

A. I did.

(Narrative resumed.)

I am asked to state my conclusion as a result of that consideration. I assumed that when the Pittsburgh & Lake Erie and Pennsylvania (935) Railroads extend the ex-river rate to Cleveland they will do so either by applying to the Cleveland distance the same percentage of the Holmes and Hallowell maximum scale as is represented by the 77 cent rate from Colona and Conway to Youngstown and points grouped therewith or by adding to the 77-cent rate an existing all-rail differential of Cleveland over Youngstown. The use of the Holmes and Hallowell scale method would apparently result in a rate of $1.16. If the Pittsburgh all-rail differential is used this would result in a rate of $1.27. If the Connellsville differential is used the rate would be $1.25, and if the Fairmont differential is used the rate would be $1.18.

I am asked to explain how I arrived at the $1.16 possible or probable rate by the use of the Holmes and Hallowell scale.

[fol. 956] The average distance from Conway via the Pennsylvania Railroad to the Youngstown group is 46.98 miles. The average distance from Colona via the Pittsburg & Lake Erie Railroad and its connections to Youngstown and points grouped therewith, including Warren, is 46.64 miles. The rate of 77 cents found for these destinations is, therefore, 75.5 percent of the Holmes and Hallowell scale.

The distance from Conway to Cleveland via the Pennsylvania Railroad is 109.4 miles and the distance from Colona to Cleveland via the Pittsburgh & Lake Erie Railroad is 108 miles. So if these carriers should extend the Colona and Conway to Youngstown ex-river rate of 77 cents to Cleveland on the same percentage of the Holmes and Hallowell scale the Cleveland reasonable maximum rate would be $1.16.

Q. Now, Mr. Durham, based upon those calculations I wish to re-ask the question which was under discussion just before the recess.

You have stated that if the proposed ex-river rate of 77 cents per ton from Colona and Conway to Youngstown were projected to Cleveland on what you have referred to as the Connellsville differential basis the rate would probably be $1.25 per ton.

Assuming this to be a fact, and assuming further that the transfer charge at Colona or Conway would be 12 cents per net ton, how much would be left out of the $1.74 rate from these West Virginia mines across the river from your River Division to Cleveland to cover the water movement from these mines to Colona or Conway on coal moving from them to Cleveland under the ex-river rate?

A. 37 cents.

(Narrative resumed.)

If instead of the $1.25 Connellsville differential rate we were to use the rate which would probable be made by the [fol. 957] progression of the Holmes and Hallowell scale, namely (937) $1.16, there would be 46 cents left out of the

$1.74 rate to cover the water haul. The approximate distance from these mines in West Virgina which take the $1.74 rate to Conway or Colona by river is about 64 miles. The all-rail rate to Cleveland from mines in the Moundsville district of West Virginia is $1.84.

On coal moving from the Moundsville district through Colona and Conway to Cleveland on an assumed rate of $1.25 Conway and Colona to Cleveland, and upon an assumed lifting charge of 12 cents, the amount remaining for water transportation would be 47 cents.

On the $1.16 possible rate, coal moving from the Moundsville district via water to Colona or Conway, thence by rail to Cleveland, on an assumed rate of $1.16 the amount remaining to pay for the water haul would be 56 cents.

The distances in miles on the river from Moundsville to Colona or Conway is about 78 miles via river.

(938) I am asked what is the approximate ton mile charge proposed to be made by the Union Barge Line from pool 6 Monongahela River to Colona and Conway on the one hand, and to Mingo Junction and Martins Ferry, on the other, as shown by exhibits filed in this proceeding. It is approximately three mills per ton mile, for a down stream movement via water.

In my opinion the charge for the up-stream movement to which I have just referred would probably be somewhat higher in mills per ton per mile.

I was asked whether or not the ex-river rate to Cleveland could be utilized in a scheme to cross-haul from [fol. 958] Cleveland to Toledo on Lake Erie, and whether or not such a plan would be practical. I do not believe it would be practicable, and I believe that that is amply demonstrated by the fact that there is no Pittsburgh or Connellsville Lake cargo coal being cross hauled from Cleveland to Toledo and under the lake cargo rate from the Pittsburgh and Connellsville district of $1.46 and $1.54.

There is not any Fairmont coal being cross-hauled under the Fairmont rate of $1.66. (939) The lake cargo rate of $1.46 from the Pittsburgh district to Cleveland is 21 cents less than our estimate of the river-rail charges on coal from pool 6 to Cleveland, moving via Mingo Junction and our line. The lake cargo rate of $1.54 from the Connellsville district to Cleveland is 13 cents less than that estimated river-rail charge of $1.67. The lake cargo coal rate from

the Fairmont district to Cleveland is one cent less than the estimated river-rail charge. However, that river-rail charge is estimated from a point in the Connellsville district.

We have used the same river-rail charges in all three of these calculations, (940) although the lake cargo rates which we used vary according to the district of origin.

I am asked if these lake cargo rates from the Pittsburgh, Connellsville or Fairmont district to Cleveland have been used during the past three years for the cross-haul of coal between Cleveland and any of the other Lake Erie ports. I called upon the Ore and Coal Exchange of which our company is a member, to furnish me information as to the cross-hauling of lake cargo coal for the past three years, and from their report I find that there has been no cross-hauling of coal from Cleveland to any Lake Erie port.

[fol. 959] I was asked as to the shipments of coal by the Wheeling & Lake Erie Railway Company to Massillon, Ohio during the years 1929 and 1930, as bearing upon my contention that 1929 was a year of relatively heavy traffic and 1930 was a year of relatively light traffic. This movement of coal to Massillon did not constitute any considerable portion of the entire traffic of our company during the years 1929 and 1930. It constituted only an inconsiderable portion of the total traffic.

I am asked to turn to page 519 of our company's (941) annual report to the Interstate Commerce — for the year 1929. The total revenue tons handled for that year was 20,369,418. At page 519 of the 1930 annual report to the Interstate Commerce Commission, the corresponding figure was 15,834,450. The percentage of decrease 1930 under 1929 is about 22.26 percent.

I was asked some questions concerning the minimum weight of 25 tons which is named in the suspended tariffs. That is the same minimum weight as appears in our commercial and lake cargo coal tariffs.

I am now having prepared under my supervision a statement showing the minimum weights effective under certain of the protestants' lake cargo coal or commercial coal rates, and I shall be glad to file that prior to the conclusion of this proceeding. (942)

I was asked by Mr. Fitzpatrick concerning my statement at page 2245 in the record in 15007, Lake Cargo Coal Rates

of 1925, which I read into the record. That statement was [fol. 960] made with respect to lake cargo coal traffic, which requires different handling, and also without any study whatever having been made as to costs. Nothing corresponding to the cost study which I had made previous to the hearing, and no opportunity for me to examine anything like the same information as to costs which was afforded by that cost study.

Recross-examination.

By Mr. Orcutt:

I am asked if my investigation of Coalburg on the Kanawha River indicate to me whether any coal was ever shipped from Coalburg via the River. My investigation did develop that there was a small river shipment from that point in 1929 (943) I simply selected that as a distance more or less arbitrary.

I do not think that it is pretty nearly as near the upper limits of the Kanawha as it was possible to name any station. My recollection is that it would have been possible to go almost to Kanawha Falls, which is considerably above there. I do not seem to have anything on what the movement was via river by our mines having river tipples from the vicinity of Cedar Grove and Dana to Cincinnati. I don't know if the distance from Cedar Grove and Dana to Cincinnati is fairly comparable to the distance from those points to Mingo Junction. The only bearing that the mileage by river has upon the rail rate which follows the river movement is in the consideration which should be given to the total transportation charge which is made to the shipper.

[fol. 961] I compared the Fairmont to Cleveland rail rate on lake cargo coal with the river-rail rate via Mingo Junction.

(944) I am asked if that calculation was based entirely upon the assumption that the river rate was 45 cents. Yes, I think it would be more, and if it was more my calculation would be that much off and if it was less it would be that much out of the way, the other way.

I do not know the Steel Corporation's through charge. I do not know the Steel Corporation's through cost to Cleveland from the Fairmont district. I do not know any of the Steel Corporation's costs on the Ohio River.

(945) I am asked what is my idea as to what the rate should be made ex-Ohio River at Mingo to Toledo, Ohio. I haven't thought that through sufficiently to be able to answer., I do not have enough information to justify an answer at this time.

We serve Toledo. There is one steel plant there. I wish to correct that. It is not a steel plant. I do not understand that they manufacture any steel, but pig iron only.

They use large quantities of coal, most of which is produced in the Crescent district, in the southern fields.

As to what would be my idea of a proper lake cargo rate to make ex-river at Mingo Junction for application on movement to Huron, I have not considered that sufficiently to justify answering it.

(946) I am sorry to say that we do not move large quantities of lake cargo coal to Huron. We have been deprived of that privilege since some time ago.

[fol. 962] That movement is greater than the movement of coal via our line to Canton. I don't remember that the movement of coal is greater via our line to Canton and Massillon.

I put in figures showing coal carried to Canton, Massillon, Cleveland and Lorain. I do not keep the figure in mind of what our movement is approximately to Huron. I can supply it, if necessary.

(947) I investigated the cross-hauling of coal from the port of Cleveland. I investigated that also as to the other Lake Erie ports.

As to whether my investigation indicated that there was some movement from Ashtabula to Detroit, I did not get any information as to Detroit. I confined my inquiry to Lake Erie ports. My investigation indicated to me that there was quite some cross-hauling from Sandusky to Toledo.

(948) I believe there is some movement from Sandusky to Chicago. I do not have personal knowledge of it, and I believe there is from Conneaut to Chicago. I would call a movement from Cleveland to Buffalo cross-hauling. I did not find any considerable movement from Cleveland to Buffalo. As to what cross-hauling I did find from the ports of Ashtabula, Fairport and Erie, I found Fairport to Buffalo, 1928, 313,245 tons; 1929, 408,200 tons; 1930, 22,133; a

total for the three years of 743,578 tons. Erie to Buffalo, 1930, 70,361 tons; total, 70,361 tons.

Ashtabula to Buffalo, 1928, 305,954 tons; 1929, 532,074 tons; 1930, 839,923 tons; a total for the three years of 1,677,951 tons.

[fol. 963] I am asked was the fact that I had given no consideration whatever to the lake cargo rate ex-Ohio River at Mingo Junction to Huron due to the fact that I did not know what the Huron tonnage was. I could find out what the Huron tonnage is. I am just not able to tell it off hand.

I am asked why I have given no consideration to the rate Mingo Junction to Huron and to Toledo when I have gone to such pains to figure out a probable rate via other lines than our own from Colona and Conway to Cleveland. I was not considering the putting in of a rate to Toledo, while I was considering the putting in of a rate from Mingo Junction to Cleveland. And in doing that I wanted to know (950) what I had to meet and what kind of a rate it was necessary to make in order to permit the traffic to move.

We have a large industry at Toledo. And when we get around to it we will give consideration to it.

I indicated to the suspension board at the informal hearing that I would give consideration to a Toledo rate, and I am indicating that here.

I am asked what scale or what other rates will I take into consideration when I consider our rate to Toledo. I couldn't tell you now. I might have to be bound by it or have it brought up again. That is not a correct statement that I am just picking it out of the air. I don't know if I would get it the way I got our Mingo rate.

[fol. 964] By Mr. Fitzpatrick:

I gave some distances from the Kanawha district over the Kanawha River and the Ohio River to Mingo Junction. In the movement of traffic over that water route the movement would be with the stream on the Kanawha River to (951) Point Pleasant. The empty barges moving from Mingo Junction back to pool 6 would be moving against the stream.

(Witness temporarily excused.)

[fol. 965] W. H. SCHOONOVER was thereupon called as a witness for and in behalf of protestants and, having been first duly sworn, testified as follows:

Direct examination.

(952) By Mr. Orcutt:

My name is W. H. Schoonover. I am supervisor of Freight Train Service of the Central Region, Pennsylvania Railroad. I have been employed by the Pennsylvania Railroad Company for 26 years. (953).

All of that time or the greater part of that time has been spent in the transportation department. I have access to the records indicating the supply of cars available and other transportation statistics, and I generally know what those are currently.

In September we dispatched an average of 54,000 loads, while in July of this year it ran 35,800. That is loaded cars. That is 40 percent of capacity of existing facilities for July, 1931. In September, 1929, in the central region, we had 2334 cars stored. In July, 1931, 40,597. (954) 336 locomotives were stored in white lead at the end of August, 1929. At the first of August, 1931, 680.

I am acquainted with the facilities of the central region for the transportation of coal and other traffic. The central region of the Pennsylvania Railroad can handle very much more traffic in addition to that which is being currently offered to it.

(955) We could handle just double what we are handling now, without any effort. The Central region of the Penn-[fol. 966] sylvania Railroad is bounded on the east by Altoona and Renova, Pa., on the west by Crestline and Columbus and Morrow, Ohio. That central region of the Pennsylvania Railroad includes within it the lines serving the Pittsburgh, Connellsville and Fairmont coal districts, the western portion of Pennsylvania and the northeastern portion of Ohio.

Cross-examination.

By Mr. Martin:

September, 1929 was slightly abnormal as compared with the previous year. As to whether it was more than slightly

abnormal probably that was the best month we had, or the best year we had.

It was the best year we had up to that time, (956) and it was one of the best months of 1929. Off hand I can not name any previous month in that year or any other year when we had as few cars in storage and as few locomotives in storage as at September 30, 1929.

Off hand I can not name any month in that year or in any other year when our traffic was heavier than in September, 1929.

I am familiar with the fact that the country today and on July 31 of this year is in a severe industrial depression.

Undoubtedly that has something to do with this excess number of locomotives in white lead and excess number of cars that are stored.

(957) The Pennsylvania Railroad has not purchased any additional equipment during the years 1929 and 1930 which could have been used or is being used in the central eastern region.

[fol. 967] I know of none. I know in a general way about their purchases of equipment during that period. (958) To my knowledge they purchased no equipment during the years 1929 and 1930, for use in the central eastern region. I am not willing to say that they purchased none and can not make that statement.

(959) During the period from September 30, 1929 to July 31, 1931, the Pennsylvania Railroad Company increased its cars. It did not increase its locomotives to my knowledge. As to whether I would not know whether they were increased or not, I would have general knowledge of it, if they were assigned to the central region. If anything I would say that there was a decrease in the locomotives of the Pennsylvania Railroad Company during that period. I can not give you concrete figures.

(961) The number of cars owned by the Pennsylvania Railroad Company was increased through the construction or rebuilding of cars during the period from September 30, 1929 to July 31, 1931. The number of cars so constructed or rebuilt during that period was 1700. That number was not increased from any other source that I know of.

(962) J. E. DAVENPORT was thereupon called as a witness for and in behalf of the protestants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

My name is J. E. Davenport, Assistant to Vice President, New York Central Railroad, 466 Lexington Avenue, New [fol. 968] York City. My duties are of an operating nature. I was delegated by our company to investigate on the ground certain operating conditions in connection with the handling of coal under the Holmes and Hallowell scale from Duluth and Superior into the territory covered by that scale.

While making this investigation I had access to the records of the five railroads that transport bituminous coal from the head of the lakes to the twin Cities and westward.

The carriers serving Duluth, Superior, Minneapolis and St. Paul were willing to assist me in making this investigation. They were very cordial and rendered every possible assistance.

The primary purpose in studying on the ground operating conditions in connection with bituminous coal traffic moving from Duluth or Superior was to ascertain whether or not existing operating conditions differ and, if so, in what respect from the operating conditions outlined by the I. C. C. in its decisions in the Holmes and Hallowell cases, 60 I. C. C. 687, 69 I. C. C. 11, and 77 I. C. C. 683, decided respectively March 8, 1921; June 8, 1922 and March 6, 1923. That is if they differed from the operation conditions in that particular territory referred to in those cases. We developed information shown on Exhibit No. 86 which I now offer.

(Protestants' Exhibit No. 86, Witness Davenport, received in evidence.)

My exhibit covers the years 1926 to 1929. And we have averaged the figures from 1896 to 1905, and from 1905 to 1915 under a second total, 1916 to 1925 under a third total, and the four years 1926, 1927, 1928 and 1929 are shown separately.

[fol. 969] This exhibit shows the source from which the information indicated thereon has been secured. I made an investigation as to the destinations to which this volume of coal moved in the Northwest. (965).

The nature of that investigation and its results is that a study was made from the agents' records of the five railroads handling coal under the Holmes and Hallowell scale and a detailed record taken of the destination of each car of coal moved during the month of October, 1929, under that scale. This study covered the movement of 10,807 cars of coal, of which 4,257 cars, or 39.3 percent, moved to the destinations of St. Paul and Minneapolis.

I am asked what I developed in connection with the equipment which is used for hauling coal from Duluth and Superior to the Twin Cities and into the Western territory. The investigation indicated that the situation as expressed by the Commission in its decision in the Bedford Pulp & Paper case, 163 I. C. C. 675 had not changed.

I quote from that report:

"The reports in the Holmes and Hallowell cases indicated that transportation conditions from the head of the lakes to the Twin Cities were favorable and that the movement to some extent furnished lading to box cars unloaded at the lake ports, which would otherwise have moved empty outbound."

The records of one of the railroads which handles approximately 25 percent of the bituminous coal moving under the Holmes and Hallowell scale from Duluth and Superior were examined and it was found that during the year 1929, 67.7 percent of the loads of bituminous coal transported by that road from the head of the lakes moved in box cars [fol. 970] and 32.3 percent in open cars.

The total number of cars of bituminous coal hauled by that road during the period indicated was 73,434 of which 49,767 cars were box cars and 23,667 cars were open cars.

During the five months, August to December, both inclusive, 1929, another road reaching Duluth and Superior switched 8,854 box cars from grain elevators to coal docks, of which cars practically 100 percent were loaded with bituminous coal.

I developed information relative to the movement of loaded and empty cars in and out of the Duluth-Superior terminal during the year 1929, and offer as Exhibit No. 87 a composite statement of the five railroads operating from those terminals showing the daily average movement in total cars and the percentage of that movement as to loads and empties.

(Protestants' Exhibit No. 87, Witness Davenport, received in evidence.)

(967) This exhibit is identified by the words "Volume of traffic in and out of the Duluth and Superior Terminal, Year 1929," and the information shown thereon was obtained from the train sheets of the five roads involved in this movement.

The exhibit indicates that into Duluth and Superior 53.4 percent of the movement is loaded movement, while in the outbound direction, in which direction the bituminous coal moves under the Holmes and Hallowell scale, 80.1 percent of the movement was loaded movement.

As to what I developed in regard to the line haul operation between Duluth and Superior and the Twin Cities, The Commission in its decisions in the Holmes and Hallowell [fol. 971] cases had the following to say in connection with line haul operation from the head of the lakes, 60 I. C. C. 698:

"Transportation conditions from the head of the lakes to the Twin Cities is said to be ideal and no material evidence was introduced tending to show that there were any unusual or difficult conditions encountered in connection with any of the transportation here involved."

I had access to the records of the five roads that haul bituminous coal from the head of the lakes covering their operating conditions and a review of those records indicated (968) that the situation as outlined in the Commission's report referred to has not been altered. Generally, in the transportation of bituminous coal from Duluth and Superior there are some grades encountered during the first 30 miles of the haul, but after that section of the routes of the carriers has been traversed, the balance of the territory in the Twin Cities presents no particular operating difficulties.

For example, the Great Northern, which handles more than 25 percent of this tonnage, has a loading order of 6000 tons for their largest locomotive, the tractive effort of which is 100,000 pounds. This movement includes helper service for approximately 30 miles from Superior and similarly the Northern Pacific which handles only slightly less of this traffic than the Great Northern, moves 4500 tons with a locomotive whose tractive effort is 63,460 pounds, helper service involved being approximately 30 miles.

[fol. 972] Cross-examination.

By Mr. Martin:

I did not investigate the question of the balance of movement of inbound grain to these ports and outbound coal. That matter was mentioned by the Interstate Commerce Commission in those two Holmes and Hallowell cases in a general way, and the only investigation that we made of it was the one record that was kept by the Northern Pacific for this short period of time. (969) That is transfer of box cars from grain elevators to coal docks.

I did not make any investigation to determine why on the inbound movement to these ports the number of loaded exceeded the average for the year only in the months of August, September, October, July, June, May and April; in other words, from about April to October was the peak of movement of inbound loads. We did not attempt to analyze the traffic in detail as to what caused the loaded the movement one month varying from another. We did not attempt to find out the effect of the inbound grain upon the loaded movement. By that meaning the proportion of inbound grain to total loaded inbound movement. We did not attempt to get any detailed figures on that. In conversation with the officials there we heard information relative to the grain movement. It is a foregone conclusion that the months you mentioned are the heavy grain movement months, if that is what you are interested in.

I am asked if I also found as shown by this exhibit that (970) the heavy inbound empty movement covers the re-[fol. 973] maining months of the year, namely, January, February, March, November and December. Well, of course, you take the percentage at about 100 per cent, half loads, and half empties, and the higher percentage of loads you get the lower percentage of empties.

That is not mathematics. It is the average movement in and out and of the 1,349 moving in each day in January 31.9 were loads and 69.1 were empties.

The exhibit clearly shows that during the period April to October, inclusive, the inbound loads exceed the average for the year and during the two periods January to March, inclusive and November to December, inclusive the inbound empties exceed the average. If you take 12 months in the year and set out a figure of percentage movement of loads

and empties each month, nine times out of 10 you will wind up with six of them above the average and six below.

We were unable with the time involved to find out anything about this balance of grain and coal or to make a detailed study in regard to the cause behind the variation in figures in the statistics of these roads.

(971) Taking the other half of the exhibit, it shows that the heavy outbound movement of loads from these ports occurs in the months of January, February, March, November and December of each year, or what might be termed your winter months. The average of those five months is above the average for the year. Those are the months when coal was moving out in heaviest volume from these ports to inland destinations. Coal moves in greater volume during those five months than in the remaining part of the year.

[fol. 974] I am asked if I made any investigation as to the proportion of coal which was loaded in box cars and open top cars. We reviewed the records of the railroads handling the largest proportion of coal the Great Northern and for that year 1929 the figures indicated that of ... cars loaded with coal moving under all scales—I don't know that my direct testimony was absolutely clear in that respect. Those figures were scale figures, and of all the cars that they moved with coal during the year 67 per cent of the cars were box cars. That was a figure of something over 49,000 for the year.

By Mr. Orcutt:

It includes everything that is weighed.

By Mr. Martin:

(972) I am asked if I ascertained the average loading of the lading in those box cars. The figure you quoted is 73,000 cars. 73,000 cars was the total, and 67 per cent was something in excess of 49,767 box cars.

In regard to the average load, I did not attempt to get a figure at all in regard to average loading. The only figure that I could derive from the information I secured up there was a figure which I believe indicates quite closely what the average loading is, and I would not want to be accused of swearing that it is absolutely correct. It is a figure based upon the total number of tons of coal that

moves over the dock or placed on the dock during the year, which figure is obtained from the War Department records, and matched that up with the total number of cars from the scale records that are loaded during the year. The up-set of the figure is the carry-over from one year to the other. If the carry-over was the same your average [fol. 975] would be very close to correct. If you take those two figures and throw them together you get an average loading of slightly under 40 tons.

The difficulty with that is that the carry-over varies (973) from one year to another. It is bound to be as a result of a cold winter or a warm winter.

So far as the transportation records of these carriers are concerned, we did not attempt to get the average loading. As I recall it the Commission talked about 35 tons in the Holmes and Hollowell case. My observation there in connection with the loading might be of interest. The box cars run about 35 tons. The open-top equipment is not as large as our open-top equipment in the East, and I would guess it would run about 45, or perhaps a little over 45 tons. The only other equipment loaded with coal are these ore cars, which carry coal back to the mines, and they will average not much over 20 tons a car. None of that coal, of course, moves under the Holmes and Hallowell scale. That is none going back to the mine.

In my opinion box car loading would be about 35 tons. (974) Open top loading approximately a little over 45 tons, and the whole is slightly under 40 tons. I did not make any investigation of the traffic density on those roads as compared with the traffic density of roads operating in the State of Ohio. I did not get any figures regarding the traffic density whatever. I covered in my statement the [fol. 976] things that I have covered in my statement. That is about all I can say. We accumulated a lot of information up there. I could spend all day tomorrow putting it into the record if it was of any value, but I am not going to stay tomorrow.

(975) Mr. Martin: I just want it clearly understood of record that on Exhibit No. 87, the heading "Daily average cars," appearing over the four left hand columns should appear in the center of the page, as it relates to inbound as well as outbound.

(Thereupon an adjournment was taken until Monday, September 21, at 10:00 o'clock a. m.)

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(976) (Hearing was resumed, pursuant to adjournment at 10 o'clock a. m., September 21, 1931.)

WILLIAM F. MORRIS, JR., was thereupon called as a witness on behalf of the protestants and, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

My name is William F. Morris, Jr., I am Vice President of the Weirton Steel Company, Vice President in charge of traffic.

The plant of the Weirton Steel Company is located at Weirton, West Virginia, about 61 miles below Pittsburgh below the river and about 40 miles below Pittsburgh by rail. I have been with the traffic department of the Weirton Steel Company for the last 11 years. I have entire charge of their traffic. (977)

[fol. 977] I report direct to the President. The Weirton Steel Company in conducting and maintaining its business uses coal. We get the bulk of our coal from Isabella, Pennsylvania No. 6 pool on the Monongahela River. I am shown Exhibit No. 58. I am asked if I can describe from that exhibit the approximate location of our source of coal. It is indicated with a mark as No. 25, as the Weirton Coal Company and the Weirton Steel Company. As I see it is located in the pool known as Pool 6 about 70 miles up the Monongahela River from Pittsburgh.

I am shown respondents' Exhibit No. 2 and asked if I can describe for the record where on that exhibit our source of coal is located. It is identified as No. 28, which is the Weirton Coal Company.

(978) The Weirton Steel Company's plant on that exhibit is located right prior to the curve that is indicated in the Ohio River and I would say it would be southwest of that is shown here as No. 8. I assume Dam No. 8 is what the symbol indicates. I see Chester here. I take it

for granted that is it right here (indicating) between No. 8 and No. 9. If that is lock 8 and lock 9, it is between those two.

I would say that the plant of the Weirton Steel Company is approximately 7 miles from Mingo Junction, on the river. The mine of the Weirton Steel Company is equipped with a river tipple. We coal on to barges from that mine direct. The coal is moved in barges from the mine to the mill by the Monongahela and the Ohio River.

[fol. 978] We do not perform that work ourselves. We employ someone to do it.

(979) The barges are furnished by the Coal company which is a subsidiary of the Steel company. Both the Weirton Coal Company and the Weirton Steel Company have no steamboats of their own, so it is necessary for us to contract for that service.

Q. Would you mind stating for the record Mr. Morris, approximately what it costs you to move that coal from Pool No. 6 to Wei[redacted]king into consideration the depreciation on your barges, interest on the money invested in them, sinking fund arrangement, if you have one to take care of or write off the cost of the barges, and provide for the purchase of new ones when the old ones are worn out, together with the price which you have to pay to the towing concern to perform the work for you; taking all that into consideration, can you give us an approximately maximum figure beyond which it does not cost you?

A. Between 28 and 31 cents.

Q. Is that per net ton or per gross ton?

A. Per net ton.

(Narrative resumed.)

In any payment for this service the bills are checked by my department and o. k'd for payment, so that I know of my own knowledge what this transportation service costs our company.

Mr. Orcutt, just one answer I made to you I am not just fully clear on, whether it is net or gross tons. I might verify that for you and clear it in the record. I said I [fol. 979] I thought it was net tons. I am inclined to think it is gross. However, I will have to verify that to make certain.

Cross-examination.

(981) By Mr. Martin:

The Weirton Steel Company has a plant inland from the Ohio River at Clarksburg, West Virginia. We have no other plants in Ohio, other than those located on the river, with the exception of the one at Steubenville, which is served by the Wheeling & Lake Erie, the Pennsylvania Railroad and the Ohio River. That plant and the plant at Weirton, West Virginia are on the Ohio River.

I am asked if either of those plants are in competition of steel companies at Cleveland. I would say Weirton is in competition with any steel plant that produces steel.

Those competitors include the American Steel & Wire Company on a certain line of commodity. If they make cold rolled and hot rolled strips at Cleveland. They do make it at some of the plants. I am not certain which ones. That would include the Republic Steel Corporation at Cleveland, and the Otis Steel Company at Cleveland, and the Corrigan & McKinney Steel Company at Cleveland if they make reinforced concrete bars and angles, any line of material that we produce. I am not familiar with what they make.

I am not familiar in a general way with what the companies make in the matter of handling shipments from our plants.

[fol. 980] I am asked about the National Tube Company at Lorain. I think they are in the pipe business. We do not manufacture any pipe.

(984) I am asked if our river plants compete with the plants of the Weirton Steel Corporation at Canton and Massillon. I made the opening statement that the interests that I represent, our plants at Weirton manufacture tin plate, cold rolled and hot rolled strip steel, reinforced concrete bars, angles and channels, tin plates, turn plate—perhaps other materials and we compete with any other concern that produces a like and similar commodity, including the plants of the Republic Steel Company if they manufacture that material. I am not competent to answer whether *to* do or not.

I stated at the conclusion of my testimony that the cost of our company of towing coal from Isabella mine in the

No. 6 pool to Weirton was 28 to 31 cents per ton. Our company furnished the barges for the transportation of this coal. We furnish 41 barges for that service. The rated capacity is 1,000 tons. If that is not the correct answer the gentleman we bought them from is in the room.

I believe that the average loading of those barges is around 750; that is governed largely by the conditions of the river. They are steel barges.

(986) Those barges cost our company approximately $400,000 for the 41 barges. (987) They were purchased within the last two years; perhaps that is a little wrong. They were not new when purchased. They were approximately three or four years old. I am just speaking from memory.

[fol. 981] I am asked in building up this cost of 28 to 31 cents how much did I include in that for interest or return on investment. Approximately 9 cents a ton. I am asked what tonnage did I use to arrive at that figure. We handled last year approximately a total tonnage handled of something over 800,000 tons. I believe it was about 650,000 tons in our own barges, approximately, and about 150,000 tons or more in somebody else's barges.

Q. Do I understand you figured interest on investment applicable (988) to that 650,000 tons at about 9 cents a ton.

A. The interest and depreciation?

Q. Interest and depreciation. Now, can you give us the calculations showing how you arrived at that 9 cents a ton?

A. No, I cannot, because I had that information furnished me before I left. I only had a very few minutes when I knew I had to come over here.

Q. You mean somebody furnished you with a figure of 9 cents but furnished you with no supporting detail?

A. That is correct; but it came from a reliable source and I am almost certain it is a hundred per cent correct.

Q. Who is the reliable source?

A. Our accounting department at Weirton, West Virginia.

Q. Did you think to request them for the details to support that figure of 9 cents?

A. No, sir; I asked what it cost to float our coal down from dock to dock. Taking those factors into consideration.

Q. Did it not occur to you you might be asked for the

detail of that figure when you came on the stand, Mr. Morris?

[fol. 982] A. I did not give it a thought, Mr. Martin, because, as I tell you, I realized I had to be here and I came.

Q. Well, now you are going to furnish some additional information for the record as to whether you are talking about net or gross tons. Will you please furnish for the record a full breakdown of the 9 cent figure? In fact, I will want the (989) full breakdown of the 28 and 31 cent figure, but we will take it step by step.

(After a discussion off the record the following occurred:)

Examiner Curtis: Now, this is what the Commission would like to know, Mr. Witness, as I feel quite certain, would be to get as much helpful evidence as possible to approximately what the cost of your coal by barges is in the Ohio River under reasonably normal conditions.

The Witness: Well, in order to arrive at that we would have to determine as to what time those barges would be utilized in the handling of other commodities. I do not even believe that was taken into consideration because they have been used for the movement of pig iron.

(Narrative resumed.)

By Mr. Orcutt:

(990) The whole thing was charged in against the coal.

Mr. Martin: I object to those statements, Mr. Examiner, unless the witness is prepared to bring in a full disclosure of all the information because it apparently is somewhat at least of an opinion or guess or something between a guess and an opinion.

The Witness: It is not a guess, Mr. Martin. It is a figure submitted to me by the accounting department who gave the basis on which the business of the interests I represent are [fol. 983] transacted. I do not think they guess about it.

Mr. Martin: I am talking about your last statement that the barges may have been used from time to time.

The Witness: I won't say may have been. I will say have been.

Mr. Martin: And the further statement that the charge for the time they were used in that service has been placed against the coal and not against the other commodities.

The Witness: I have not said definitely it has or has not.

Mr. Martin: That is what I was referring to.

Examiner Curtis: Let me see if I cannot clear the atmosphere just a bit. From your general knowledge of this transportation on the river, is it your opinion and do you know whether it costs more or whether the cost of handling pig iron (991) in these barges is materially greater or less than that of handling your coal from the mine to Weirton?

A. I can best answer that question by giving you a concrete case. Somebody else will have to determine the answer. That is this: The pig iron that moves from Weirton, we will say to Breckenridge, which is approximately 80 miles up stream, the rate is 50 cents a ton. The barges load 500 to perhaps 600 tons. That would be perhaps the minimum comparison, of their going up the Allegheny river which is an eighty mile trip upstream as against 133 miles down stream, with a lesser tonnage per barge and a lesser number of barges per tow.

Examiner Curtis: In your opinion, it is much more costly to haul either coal traffic or ore traffic, or whatever you haul upstream than it does to haul it downstream?

[fol. 984] A. It is harder to haul it upstream.

Examiner Curtis: That is what I say, harder. Now, that does not shed much light on moving coal down the river.

Mr. Orcutt: The cost to the Weirton Steel Company, whether they use rail or boat, has to be paid for or purchased by them as transportation.

Examiner Curtis: Surely.

Mr. Orcutt: If they purchase it by rail they pay the established and lawful rate. If they move it down by boat they move it down for whatever they can get somebody to contract to do it for. He has given us one rate. That is the rate by river. (992) If you want the rate by rail I think Mr. Morris can give it to you, if that is what you are getting at.

Examiner Curtis: No. He indicated in his testimony that these barges were used for two purposes by the company; one to haul coal down the river and to haul pig iron up the river, as I gather it.

The Witness: Just a minute. Pardon me. I want to clear that up. I said that these barges in some cases were used to haul other material. That is only when the regular means of transportation are not available and we have to move the material. If we have a barge of our own we utilized it.

When I said the rate was 50 cents from Weirton to Breckenridge, that applied to everything, barge towing and all. We furnish no barges in the moving of that iron unless it is essential that it be gotten out at a certain time and the regular established line that handles that business does not have [fol. 985] a barge available; then we loan them a barge.

Examiner Curtis: Do you think the amount of pig iron you handle, we will say in a given year, will really affect the cost figures that you have given for handling coal down the river?

A. No, sir; it would not materially affect it, but I want to be honest in my statement and tell you it was not all used exclusively in the coal trade. There are times that one or two of those barges were used in the movement of scrap iron or pig iron. (993)

(Narrative resumed.)

By Mr. Martin:

That would be a very limited amount; but I did not want somebody to come in here and say we used them for that, because I know we do and I want to be honest about that.

If it is satisfactory to the people I report to, I will furnish you the 9 cent figure of interest and depreciation and how I arrive at the total of 31 cents. If not, I will have to decline.

(994) I spoke of the other part of the charge being self service or speaking for itself. That amounts to 22 cents. (995) The Pittsburgh Coal Company makes that charge. It covers the supplying of the power, the ordinary repairs to the equipment with transportation from the mine to the dock.

I am asked if that covers a volume of approximately 650,000. That is all based, Mr. Martin, on the operating conditions of our mill. The figures I have used have been those of 1930, which do not reflect the total volume that might be handled under a full, normal operating year.

[fol. 986] This 22 cent charge is a figure named in a written contract with the Pittsburgh Coal Company. If I recall correctly it stipulates a minimum of 40,000 tons per month, with a total maximum charge, which I can verify later, I will say, as 23 cents.

In the event we fall below 40,000 tons in any month, we pay a penalty on the first 5,000 tons of a half cent, then the maximum—it makes the maximum rate 23 cents.

(996) There is no irreducible minimum beyond which that rate would not apply. One cent is the spread between the maximum and the minimum, based on the volume, if I recall correctly. I will not produce a copy of that contract when I bring in our other information. I will verify those figures, however, if you want to.

As to whether my figure of 9 cents covering interest and depreciation on the 41 barges which our company owns, also includes the item of taxes, I can not say. I have not been advised.

(997) The insurance is carried by the carrier. They carry the insurance on the load. Whether it includes the barges or not in the contract, I will have to determine that. I will not hesitate to let you know anything that is in it that is of value. As I have already said I am over here because I thought I better come and I testified that it would be the whole truth and nothing but the truth. That is what I am trying to give you. At the same time I am working for somebody else and there are certain things that is nobody else's business.

[fol. 987] It is right that this figure of approximately 31 cents a ton made up as I have given it to you of 22 cents charged by the Pittsburgh Coal Company and approximately 9 cents representing our own costs, apply to about 650,00- tons moved in our own barges.

Examiner Curtis: How many miles in order to get it altogether?

(998) A. 133 miles.

By Mr. Martin:

Q. All down stream?

A. All down stream.

(Narrative resumed.)

In the quantity of coal amounting to approximately 150,000 tons, that is outside coal that is purchased by us, that is beyond our ability to supply at our own mine. Offhand I can not say just where it is all purchased. I got together the figures on the total volume handled over our dock and the volume that was handled in our own barges over our dock.

I do not recall the point or points of origin of this 150,000 tons. I do not recall the charge made against our com-

pany for the towing of that 150,000 tons. It is all in the price of the coal. It is towed by some coal company who sells you the coal free on barges at Weirton.

The Weirton Coal Company operate- the mine shown as No. 28 on map, Exhibit 58 and may Exhibit 2. The Isabella mine is the mine of the Weirton (999) Coal Company, which is a subsidiary of the Weirton Steel Company. The Weirton Coal Company not only owns but actually operates directly that mine.

[fol. 988] The Pittsburgh Coal Company has nothing to do with the operation of it. We have followed the same numbering in all these maps so as to prevent confusion.

I am asked this towing to Breckenridge of pig iron how many tons are loaded into a barge. There are times by reason of the Allegheny River when it ranges from 400 to 450 up to I believe the maximum, if I can recall correctly, was about 600 tons.

I am asked if I can give the number of barges in a tow. I do not mean the number in tow. That is figuring (1000) that is all the two would take. There are taken at times 2 to 3 barges from Weirton to Breckenridge and that constitutes the total by reason of the fact that is all the available tonnage.

I did not attempt to qualify as a practical river man in the sense of operating tow equipment on the river, nor have I so testified.

Our company is in no sense in the river towing business, so that someone else might secure the services of our barges.

They are limited to what deals we can make with the boat lines to transport our materials under the most reasonable basis. We did not make the deals with these other boats that furnished the 650,000 tons, because there was no deal to be made with them. The purchasing agent who bought the coal took care of that.

Mr. Martin: Now, Mr. Examiner, that completes my cross-examination of Mr. Morris, subject to the motion that I have spoken of, which is that unless the contract is produced and unless (1001) the breakdown of the 9 cents per ton with information as to taxes and insurance on [fol. 989] the barges are produced, we shall move to strike the direct testimony of Mr. Morris on the ground that we have been denied the full privilege of cross-examination.

Mr. Orcutt: The contract will not be produced, Mr. Martin, so you can make your motion.

Mr. Martin: I make the motion at this time, Mr. Examiner, and am willing that the Examiner defer ruling on it until Mr. Morris has produced the other information when it may be proper to give the whole matter consideration.

Examiner Curtis: Well, the Examiner is ready to rule now, subject, of course, to consideration by the Commission, that your motion will be overruled in so far as you rely upon the production of the contract. The Examiner rules that you are within your rights in asking for the information that you have asked this witness to furnish. On that phase of your motion a ruling will be deferred until further developments; that is to say, whether or not he does furnish you with somewhat more of a detail statement giving you the information you seek.

Mr. Martin: May I have an exception to the first ruling?

Examiner Curtis: You can.

Redirect-examination.

By Mr. Orcutt:

I am asked if the 22 cent rate we paid to the towing concern includes furnishing of power, the labor and also the maintenance or upkeep of our barges. The ordinary wear and tear brought about by the use of these barges in the coal trade is taken care of by the one who performs the [fol. 990] transportation. The painting of the barge we take care of ourselves.

Recross-examination.

By Mr. Martin:

I am asked what is the work which the Pittsburgh Coal Company does aside from painting. I assume if they knock a dent in the barge or put a hole in it by reason of transportation, that that is what is covered by it. They would have to repair that at their own expense.

I am asked if I know of any instances where they have paid out anything. There is a certain amount of upkeep, Mr. Martin. Just what it amounts to I say I do not know because that is their obligation; but I do know they do have a certain amount of expenses in connection with the upkeep

of the equipment. Those terms are also written into the contract.

(1003) I am asked whether I know in arriving at the 22-cent figure, the Pittsburgh Coal Company computed their charge on the basis of out-of-pocket cost for use of some idle or surplus equipment. I do not know how they arrived at that figure; however, I might say to you that we had the same figure quoted by an outside towing concern. How they arrived at it I do not know, but the quotation was made to me that they would haul our coal down the river and the barges back for 22 cents. I do not know whether that 22-cent figure contains the full proportion of overhead and general expenses of the Pittsburgh Coal Company's towing fleet.

[fol. 991] Examiner Curtis: The witness is excused. Am I to understand that you are going to furnish these figures requested by counsel and for the record within say the next 10 days in the form of some documentary evidence?

Mr. Orcutt: A letter to you with copies to counsel?

Examiner Curtis: Address the letter to the Commission. Of course it will come to me. It will be marked as admitted in evidence with the date and my initials, because I understand it will take a few days, maybe a week or more—to get this stuff together, and, in the meantime this hearing will probably be concluded.

(After further discussion the following occurred:)

Examiner Curtis: Very well. Let us have it understood that you will, Mr. Morris, try to get this information as soon as you can and get it out of the way, even before the hearing is concluded, if possible. With that understanding you are excused.

(Witness excused.)

[fol. 992] Roy S. Kern was thereupon called as a witness on behalf of the protestants, and, after being first duly sworn, testified as follows:

Direct examination.

(1006) By Mr. Orcutt:

My name is Roy S. Kern. I am chairman of the Coal, Coke & Iron Ore Committee of the Central Freight Asso-

ciation. I have held that position since December 1, 1928. As chairman of the Central Coal, Coke & Iron Ore Committee I was instructed by the executives of the protesting lines to act as chairman of the defense committee and prepare certain evidence.

(1007) On recommendation of the Traffic Executives Association, Eastern territory, the presidents of the eastern roads directed me to file in behalf of roads concurring therein a protest against the tariff have under suspension. That was done and the traffic executive association, eastern territory, further directed that our committee conduct from a traffic standpoint the case for the protestants. Our committee made me chairman of the committee of protestants, and directed that I submit testimony of a general character for and on behalf of the protestants.

The testimony which I will present is from information in my office, and from our files or in the tariffs. I have prepared a map showing the rates on bituminous coal in cents per net ton. (Offered as Exhibit No. 88.)

(Protestants' Exhibit No. 88, Witness Kern, received in evidence.)

[fol. 993] (1008) Exhibit No. 88 is a map outlining, in heavy black lines, the Pittsburgh, Connellsville and Fairmont coal producing districts, within which it is understood the bulk of the coal to be moved under the ex-Ohio River rates in issue will originate. Through these origin districts it will be noted the Ohio, Allegheny and Monongahela Rivers flow.

The map further shows in heavy black lines the Youngstown, Canton, Akron and Cleveland destination rate groups. The rates among the origin district appearing upon the map are made on a differential relationship with origin districts in eastern Ohio which I shall discuss later. I might qualify that by stating that in the instance of the Canton destination group, including Massillon, Ohio, there exists no fixed differential relationship between Pittsburgh, Connellsville and Fairmont districts, on the one hand, and the Eastern Ohio districts, including No. 8 on the other.

A statement in the lower left hand corner of the exhibit sets forth the existing all-rail rates from the Pittsburgh, Connellsville and Fairmont districts to Youngstown, Can-

ton, Akron and Cleveland destination groups and the differential relationship in cents per ton obtained between the origin districts at each of the destination groups.

From this it will be observed that at Youngstown and Connellsville the rates are 8 cents over Pittsburgh and Fairmont, 16 cents (1009) over Connellsville. At Canton, Akron and Cleveland, Connellsville is 6 cents over Pittsburgh. At Canton, Fairmont is 19 cents over Connellsville. At Akron and Cleveland, Fairmont is 9 cents over Connellsville. The rate from the Pittsburgh district to [fol. 994] Youngstown is generally considered the key rate to the adjustment from the Pittsburgh, Connellsville and Fairmont district to the M. & S. Valleys, including the rate groups within which those cities are located, and this Commission in I. & S. Docket 774, Bituminous Coal to C. F. A. Territory, 46 I. C. C. 65, at page 73, so designated this rate.

The rate that I refer to is the one appearing in the legend in the lower left hand corner of $1.34.

In the case of Youngstown Sheet & Tube Company versus Railroads, Docket 4606, 29 I. C. C. 428, decided February 3, 1914, a rate from the Pittsburgh district to Youngstown of 70 cents per ton was approved. It is upon this rate that the present rate of $1.34 was built. It has been subjected only to the general increases and decreases prescribed or approved by this Commission or the Director General of Railroads during Federal Control.

In Docket 8899, Canton Chamber of Commerce versus Railroads, 56 I. C. C. 298, decided on January 5, 1920, the issue in (1010) chief was the relationship between the rates from the Pittsburgh, Connellsville and Fairmont district to Youngstown, Canton and Cleveland. In its decision the Commission stated in substance that the rates to Canton should be one-half the differential between the rates to Youngstown and to Cleveland. The differentials existing between the origin groups to this destination territory may be stated thus: At Youngstown, Connellsville is 8 cents over Pittsburgh and Fairmont is 8 cents over Connellsville. At Canton Connellsville is 6 cents over Pittsburgh and Fairmont is 19 cents over Connellsville. At Akron and Cleveland Connellsville is 6 cents over Pittsburgh and Fairmont is 9 cents over Connellsville.

[fol. 995] This Commission in I. & S. Docket 774, supra,

at page 145, fixed the above stated differentials, Connellsville over Pittsburgh, Youngstown and Cleveland and other points in Ohio east of Sandusky—Galion line, other points taken Youngstown rates. The differentials between the Connellsville and Fairmont districts, while not the result of decisions of this Commission are nevertheless of long standing and are considered by the carriers to be definite relationships. They were preserved as such through the several general rate changes authorized or approved by this Commission and by the Director General of Railroads during Federal Control.

I have prepared a map showing the Ohio No. 8 district, together with the destination groups of Canton, Akron and Cleveland, Ohio. (1011) (Offered as Exhibit No. 89.)

(Protestants' Exhibit No. 89, Witness Kern, received in evidence.)

Exhibit No. 89 is a map indicating the Ohio 8 origin district and the Canton, Akron and Cleveland destination rate groups. It will be observed that the eastern boundary of the Ohio No. 8 origin district is the Ohio River. Reference to Agent Davis' Ohio Coal Tariff I. C. C. No. 48, will show that all of the stations on the Wheeling & Lake Erie Railway from which the ex-river coal rates are in issue are to apply, it stated, within the confines of this origin group.

From the Ohio No. 8 district to the Canton group the present rate is $1.26 per net ton; to the Akron group $1.51 and to the Cleveland group $1.74. The relationship between these destination groups are not as in the instance of rates from the Pittsburgh, Connellsville and Fairmont districts, measured by fixed differentials. From Ohio No. 8 [fol. 996] to Cleveland, however, the rate is related to the Pittsburgh-Cleveland rate by a differential of 10 cents under Pittsburgh. Immediately north of the Ohio No. 8 district are the Middle and Massillon (1012) originating districts from which the rates are generally made on differential relations under Ohio No. 8. Thus the rates from the origin districts directly affected by the proposed ex-river rates are all involved in a differential adjustment in so far at least as the Cleveland destination group, which includes Lorain and South Lorain, Ohio is concerned.

I have prepared a map showing the differential rate rela-

tionship from Ohio No. 8 and Pittsburgh and Connellsville and Fairmont districts to Buffalo, New York and Warren, Pennsylvania groups. (Offered as Exhibit No. 90.)

(Protestants' Exhibit No. 90, Witness Kern, received in evidence.)

Exhibit No. 90 is a map showing the Ohio No. 8 Pittsburgh, Connellsville and Fairmont origin districts and the Buffalo and Warren destination rate groups. The origin districts are colored blue, the Buffalo destination group red and the Warren destination group black. The figures shown within the origin district in red, represents the rates to the Buffalo group; those in black the rates to the Warren group. The present (1013) rate from the Pittsburgh district to Buffalo it will be noted is $2.24 and from the Connellsville-Fairmont district it is $2.39, reflecting an established differential of 15 cents per net ton. The Warren group from Pittsburgh is rated $2.05 and Connellsville [fol. 997] $2.20, reflecting the same differential as in the instance of rates to Buffalo.

Particular attention is called to the fact that the Warren group extend westwardly to but not including Erie, Penn. Reference to my map, Exhibit No. 88 will show that the Cleveland destination group as observed in the rates to Pittsburgh, Connellsville and Fairmont district extend easterly to and including Erie, Penna.

To the north of the Pittsburgh district is the Reynoldsville district, from which the rate to Buffalo is $2.09. This is the base rate in the adjournment obtained from the Pittsburgh, Connellsville and Fairmont, groups to Buffalo. The Pittsburgh district rate being made on a differential of 5 cents per ton under Reynoldsville.

The rates to Buffalo, New York, and the origin relationship existing therein were before this Commission in the case of Lackawanna Steel Company vs. Railroads, 87 I. C. C. 383 and approved.

The Warren group was until recently a part of the Buffalo group, but this Commission in I. & S. Docket 17745, National Petroleum Association et al. vs. B. & O. Railroad et al., 163 I. C. C. 628, decided (1014) on May 12, 1930, ordered rates to Warren, Penna. stations in the vicinity thereof, reduced 19 cents per ton. In complying with this decision it was necessary for the carriers to observe the

rates prescribed by the Commission as maxima at intermediate destinations via the routes of movement and thus the Warren group evolved. It can be definitely stated that this group is the direct result of the decision of this Commission in the case cited for the carriers did not go farther than to observe the requirements of the fourth section and maintain the original group differentials. The rates from [fol. 998] the origin district to east Ohio, including Ohio No. 8, to both Buffalo and Warren groups, have since their inception many years ago been made the same as the rates from the Pittsburgh district.

I have prepared an exhibit showing the rate adjustment from the districts fixed or delineated or defined, whichever you please by this Commission in I. & S. Docket 774, reported in 46 I. C. C. 68, but to clarify your question I want to say that this may has- corrected the rate adjustment in accordance with the subsequent decisions of the Interstate Commerce Commission which in some minor respects altered the destination group boundaries, so that my map is current. (Offered as Exhibit No. 91.)

(Protestants' Exhibit No. 91, Witness Kern, received in evidence.)

Exhibit No. 91 is a map depicting the rate adjustment from the districts termed by this Commission in I. & S. 774, 46 I. C. C. 66 as the Ohio districts and the inner and outer Crescents. The districts colored green are the basic Ohio fields. Those colored red constitute the inner crescent and those colored blue the outer crescents. The heavy broken red line surrounding the northwestern quarter of Ohio, the northeastern quarter of Indiana and the lower peninsula of Michigan, constitutes affected territory and the rate groups indicated which lie outside the affected territory are called non-affected territory. When I refer to this line appearing on the map in broken red I shall refer to it as the Sandusky-Galion line, because that is what it has become commonly known as the Sandusky-Galion line. That starts at Sandusky and runs down through Galion.

[fol. 999] The differentials now prevailing at the destination groups within affected and non-affected territory are fully explained in the legend appearing in the upper right hand corner of the (1016) map. It is to be observed that the Ohio No. 8 district is one of the basic Ohio steels,

whereas the Pittsburgh, Connellsville and Fairmont districts are parts of the inner crescent. This adjustment is very intimately connected with the rates more directly affected in this case, namely, those to Cleveland, Lorain, Canton and Massillon, from the Ohio No. 8, Pittsburgh Connellsville and Fairmont districts. By this I do not intend to infer that the rates to affected territory bear specific relationship to the rates to the Cleveland, Lorain, South Lorain, Canton and Massillon, from the groups indicated. However, the Commission in I. & S. 774 designated the Pittsburgh district to Youngstown as the key rate for the adjustment to the Cleveland group, which includes Lorain and South Lorain. They further declared that the Hocking district to Toledo rate was the key to the adjustment from the Ohio districts and the crescents to affected territory and that the Hocking district to Toledo rate was for competitive reasons made the same as the rate from Pittsburgh to Cleveland.

In view of these connections between the C. F. A. rates as a whole, it can well be assumed that any material disturbance of the rates from Ohio No. 8, Pittsburgh, Connellsville and Fairmont districts to Cleveland, and so forth will have its counter effect upon the level of rates to affected territories from the Ohio districts and the crescents. [fol. 1000] (Mr. Martin objects to that statement and moves that it be stricken. There was argument and discussion, transcript pages 1017-1020 after which the following occurred.)

Examiner Curtis: He can give his opinion about it, but when it comes to a question of conclusion, that is a matter for the Commission. I think, Mr. Martin, I will overrule your objection. The only weight that will be given to what your objection goes to will be fully covered.

I further had in mind though, that where you have an experienced man dealing with a situation that they have a little wider latitude than an ordinary witness that can only (1021) add 2 and 2 together to make 4. You had on the stand what I regard as a most excellent witness and he was allowed to express his views about this thing. I think perhaps they will be entitled to whatever weight we can give them and this witness' opinion will be entitled to whatever weight ought to be given to it. But, remember,

gentlemen, that the witnesses testify and the Commission reaches the conclusion and makes findings.

You may have an exception if you want it.

Mr. Martin: I will save an exception for the technical reasons I have urged.

Examiner Curtis: Very well, proceed.

(Narrative resumed.)

In order that the record might have reference to the decisions of this Commission since I. & S. 774, appertaining [fol. 1001] to this C. F. A. affected and non-affected rate structure, I will read into the record these cases. I will give reference as to them by title, I. C. C. volume and page number.

Ohio and Michigan Coal Cases, 80 I. C. C. 663; Indiana State Chamber of Commerce vs. Baltimore & Ohio Railroad Company et al., 83 I. C. C. 591; (1022) Bash & Co. vs. B. & O., 96 I. C. C. 178; Kalamazoo Chamber of Commerce vs. C. & O., 107 I. C. C. 291; Indiana State Chamber of Commerce v. Ann Arbor R. R., 115 I. C. C. 650; Johnson-Randall Company v. Ann Arbor Railroad Company, 153 I. C. C. 728; Bush & Bush v. B. & O. Railroad, 171 I. C. C. 545.

Before leaving Exhibit No. 91 and using that exhibit upon which to base my description, the Kanawha River flows into the Ohio River at Point Pleasant, West Virginia, which town is shown in the inner crescent group, colored in red and named Ohio River district. That is about an inch or a little over west of the "W" in West Virginia on this map. The Kanawha River flows up through what is shown in blue as my new river district, then through the Kanawha district to its conjunction with the Ohio at Point Pleasant.

I have prepared an exhibit, a map showing several origin districts in the Lake Cargo Coal adjustment. (Offered as Exhibit No. 92.)

(1023) (Protestants' Exhibit No. 92, Witness Kern, received in evidence.)

Subsequently in my testimony I shall deal with Lake Cargo coal rates from Ohio No. 8 district and also Lake Erie [fol. 1002] ports. It therefore seems advisable that a brief explanation of the Lake Cargo coal rate structure be made at this point.

Lake cargo coal rates are published from several districts in the Appalachian coal regions to Lake Erie ports, Toledo,

Ohio to Erie, Penna., inclusive. Exhibit No. 92 is a map showing in the lower right hand portion thereof the several origin districts in the Lake cargo coal adjustment. The origin districts appearing in the map in Illinois, Indiana and western Kentucky are not involved in the lake rate adjustment, and I shall not, therefore, make further mention of them.

This Commission has been confronted almost continuously since 1912 and even before that time with cases involving all of portions of this adjustment. The Commission has repeatedly described the lake cargo coal rates as in the nature of proportional rates because they are applicable upon coal unloaded into (1024) vessels at Lake Erie ports for further transportation via Lake as cargo, that did not include the service of transferring the coal from cars to vessel for which service the carriers published a separate charge. The rates from the more important of the producing districts to the ports through which the coal moves are Ohio No. 8, $1.43; Pittsburgh $1.46; Connellsville $1.54; Big Sandy, Kentucky Kanawha, Kenova-Thacker Harlan, Hazard and McRoberts, which are generally alluded to as the Southern High Volatile District $1.81. New River, Pocahontas and Virginian, known as the Southern Low Volatile District, $1.96.

I named the Fairmont rate of $1.66. The differences between the rates stated are considered the differentials.

[fol. 1003] By Examiner Curtis:

Those differentials are not all the same, 35 cents. The 35 cent is the differential between Pittsburgh and the districts which I name as the southern high volatile district. When I come to the low volatile district, those rates are made 15 cents over the high volatile districts (1025) of the South. Then the Connellsville rate is 8 cents higher than Pittsburgh and Fairmont is 20 cents a ton higher than Pittsburgh; Ohio No. 8 is three cents lower than Pittsburgh.

By Mr. Orcutt:

In other words, the 35 cent differential exists between the Pittsburgh district Lake cargo rate of $1.46 and the Big Sandy, Kentucky, Kanawha, Kenova-Thacker, Harlan,

Hazard and McRoberts, or the southern high volatile rate of $1.81 on the lake cargo coal. The ultimate destination of lake cargo coal is primarily the docks of the upper lakes, namely, Lake Superior and Lake Michigan, where the coal is stored and re-shipped to points in the northwest. The rates upon which the coal moves beyond the upper docks are generally made on basis of the scale prescribed by this Commission in Holmes and Hallowell Company vs. Great Northern Railway et al., 69 I. C. C. 11. The differential relationship existing between the rates on lake cargo coal from the several producing districts constitute one of the most delicate rate adjustments in existence.

The Wheeling & Lake Erie Railway propose ex-river rates to Cleveland, Ohio, which are not restricted so as to [fol. 1004] apply only on coal for local deliveries and may, therefore, be applied on coal unloaded into vessels as cargo. If by so utilizing the rate coal from Pittsburgh, Connellsville and Fairmont districts may reach the lake at charges less than the all-rail-rate (1026) cargo coal rate, the existing all-rail differential alignments will be disturbed and the carriers will undoubtedly be called upon to restore these relationships by downward revision of rates from origin districts or mines which cannot avail themselves of ex-river rates.

(Mr. Martin objects to that statements for the reasons previously urged. The Examiner makes the same ruling as heretofore.)

(Narrative resumed.)

By Mr. Orcutt:

I have prepared a map showing the location of inland mines in the Pittsburgh, Connellsville and Fairmont districts which do not have access to river transportation but which are in competition with mines which do have access to river transportation, offered as Exhibit No. 93.

(Mr. Martin reserves the right to object to the title to this exhibit at the conclusion of Mr. Kern's testimony concerning it.)

The Witness: Exhibit No. 93 is a map of the area of Pennsylvania and West Virginia, within which the Pittsburgh, Connellsville and Fairmont districts are located.

The heavy blue line follows the Ohio and Monongahela Rivers from a point (1027) just west of Beaver, Penna., to Fairmont, West Virginia. Beyond Fairmont the river is [fol. 1005] not navigable. Many mines are situated on or near these rivers and some of them are now equipped with facilities for handling coal for river barges. Some, however, do not have such equipment. Many mining operations in these districts, on the other hand, are situated inland from the navigable waterways and cannot ship by barge. The red lines trace the lines of the carriers serving the mines in these districts which are not adjacent to the rivers and cannot ship thereby. These mines today, so far as the rail rates are concerned, all take the same rates as the river mines in the same district to Cleveland, Lorain, South Lorain, Canton and Massillon, and, of course, if through the medium of ex-river rates, such as are here in issue, it becomes possible for operations equipped with river tipples to ship to such points at lower than the rates which their competitors dependent entirely upon all-rail transportation, must pay, the latter must obtain lower all-rail rates or go out of the market.

Mr. Martin: I object to that statement unless the witness shows that he is so familiar with all of the competitive conditions, the character of the coal, and so forth, that he can demonstrate an inland mine or all of the inland mines would not be able to compete with these river mines under the proposed ex-river rates. There are a great many things that determine whether a coal mine can stay in a certain market besides (1028) freight rates. That statement is broad enough to include all. This witness has not demonstrated any familiarity with mine costs, the character of coals, or the quality of coals, the length of life of the mines, or any of those things, and I think the statement is prejudicial.

[fol. 1006] Examiner Curtis: Unless something further develops, the testimony of this witness will be confined to rates and rate adjustments. He has not undertaken so far to go into the question of available tonnage and the quality of coal, or anything of that kind. He has simply said what the rate situation is. That is all he has done. I do not think you have any ground for objection so far.

(Narrative resumed.)

By Mr. Orcutt:

I have heard the testimony of the respondents in this case. I heard the witness for the Corrigan-McKinley Steel Company say if these rates went into effect they would cease (1029) purchase of the New England Coal and Coke Company, which has not a river tipple, and purchase of somebody else who did have a river tipple. I heard Mr. Duffy's testimony, as witness for the Wildwood mine say to the effect that his company would have to go out of business in this territory if these river mines with which he competes got this rate of $1.10.

In that connection I have not extended the red lines north of Pittsburgh on my map to take in the territory referred to by Mr. Duffy, and other territory including inland mines which compete with river mines. If I had done so the red line would extend up to the Baltimore & Ohio Railroad to Wildwood and beyond. That line of the B. & O. would take up to Callorie. There is a mine on the B. & O. at or near Callorie, as I understand it.

[fol. 1007] I did not attempt to show all of the territory in which is situated individual mines which compete with the river mines. This is a map which was prepared merely from railroad tariffs. We took the points of origin in the tariffs (1030) in the Pittsburgh, Connellsville and Fairmont districts—incidentally Wildwood and mines in that locality are considered in the Freeport district, and we traced the lines of those railroads in accordance with their origin points from which the rates are maintained.

The Wildwood mine takes the Freeport rate to Buffalo. To Cleveland the Freeport rate is the same as to Pittsburgh. It is 10 cents under the Pittsburgh rate to Buffalo,

Mr. Martin: I have no objection to what appears on the exhibit except the title, which I think is misleading and perhaps protestants and Mr. Kern may be willing to correct it. The title reads: "Map showing location of inland mines in the Pittsburgh, Connellsville and Fairmont district which do not have access to the river but which are in competition with the river mines."

My objections to the title are two: In the first place the map does not show any mines at all. It merely shows the

railroads which have been accentuated by red lines which (1031) presumably serve the whole district. I do not understand that these names such as Greensberg, County Home Junction, Donohoe and others that I see on the map are names of mines. They are presumably names of communities. In the second place, it has not been shown that these mines are in competition with the river mines by any [fol. 1008] testimony of this witness. He has not qualified as having knowledge of the competition between any one mine inland and any one mine on the river. What I mean to say is this: If the title is changed so as to read: "Map showing lines of railroad in Pittsburgh, Connellsville and Fairmont districts which serve inland mines" and stop there, I think the title would be all right.

Examiner Curtis: Let us hear what the witness has to say about that.

The Witness: I think Mr. Martin's suggestion is sufficiently explanatory of the map when coupled up with my testimony.

Examiner Curtis: Then let us physically correct it.

(Narrative resumed.)

By Mr. Orcutt:

I have prepared an historical statement of bituminous coal rates in cents per net ton from Ohio No. 8, Pittsburgh, Connellsville, and Fairmont districts to Canton and Massillon, Ohio. (Offered as Exhibit No. 9.)

(1032) (Protestants' Exhibit No. 94, Witness Kern, received in evidence.)

Exhibit No. 94 is an historical statement of rates on bituminous coal from Ohio No. 8, Pittsburgh, Connellsville and Fairmont districts to Canton, Massillon, Lorain, South Lorain, Cleveland, Ohio. It consists of two pages. The history is begun with the rates in effect immediately in effect before July 1, 1917, which date was selected because it marked the first of the important changes in coal rates generally and these rates in particular. The histories are, I [fol. 1009] believe, self-explanatory, the reason for each change being set forth in parenthesis in the date column.

It seems advisable, however, that some explanation be made of the Ohio No. 8 district rate changes as of August

26, 1930, July 1, 1922, September 21, 1922, and September 27, 1923. On (1033) August 26, 1920, the 40 per cent advance under exparte 74 became effective. Carriers attempted to advance the Ohio No. 8 rate to Cleveland, Lorain and South Lorain by the same amount in cents per ton as the Connellsville to Cleveland rate in order to preserve the existing differentials. Such schedules, however, were not acceptable to the Public Utilities Commission of Ohio who ordered a straight 40 per cent increase. The carriers thereupon filed a 13th section complaint with the Interstate Commerce Commission seeking its authority to preserve the relationship between the rates from Ohio No. 8, Pittsburgh, Connellsville and Fairmont districts, which had existed prior to August 26, 1920. This case had not been decided at the time of the 10 per cent reduction on July 1, 1922, consequently Ohio No. 8 rate to Cleveland, Lorain and South Lorain was reduced a straight 10 per cent. On September 27, 1923, the Commission handed down its decision in the 13th section case as a part of the Ohio-Michigan Coal Case, 80 I. C. C. 603, which permitted the restoration of the differential relationships.

I have prepared a composite statement showing the average distances from active mines in the Pittsburgh, Connellsville and Fairmont districts to Youngstown via the shortest [fol. 1010] tariff routes. (Offered as Exhibit No. 95.) (1034)

(Protestants' Exhibit No. 95, Witness Kern, received in evidence.)

Mr. Martin: I should like to make a reservation, with the right to object to it when I know what the source of the information is and the dates of which it speaks.

Examiner Curtis: Very well.

The Witness: The mines from which these average distances were computed are the active mines reported to me for use in (1035) the most recent lake cargo coal rate cases, Dockets 23240 and 23241 by the individual lines. Those mines shipped coal by rail during the 15 month period, January 1, 1929 to March 31, 1930, and were those active during all or a portion of that period.

The source of the information is the exhibit which I filed as No. 162 in those Lake Cargo Coal Rate Cases.

Exhibit No. 95 is a composite statement of the average

distances from the active mines in the Pittsburgh, Connellsville and Fairmont districts to Youngstown, Ohio, via the shortest tariff routes. The average short route distance from the Pittsburgh district to Youngstown is 96½ miles and the current rate $1.34. From the Connellsville district it is 146.2 miles and the rate $1.42, and from the Fairmont district 155.8 miles and the rate $1.58.

I have a similar statement showing the average distances from the active mines in the Pittsburgh, Connellsville and Fairmont districts to Canton, Ohio, by the shortest tariff routes. (Offered as Exhibit No. 96.)

[fol. 1011] (1036) (Protestants' Exhibit No. 96, Witness Kern, received in evidence.)

The exhibit speaks for itself. It was prepared in exactly the same manner and from the same source of information that I stated in connection with the preceded exhibit.

I have a similar statement showing the average distances from the active mines in the Pittsburgh, Connellsville and Fairmont districts to Massillon, Ohio, via the shortest tariff route. (Offered as Exhibit No. 97.)

(Protestants' Exhibit No. 97, Witness Kern, received in evidence.)

I have also a similar statement showing the average distance from the active mines in the Pittsburgh, Connellsville and Fairmont districts to Cleveland by the shortest tariff route. (Offered as Exhibit No. 98.)

(Protestants' Exhibit No. 98, Witness Kern, received in evidence.)

I have a similar statement showing the average distances from the active mines in the Pittsburgh, Connellsville and Fairmont districts to Lorain and South Lorain. (Offered as Exhibit No. 99.)

(Protestants' Exhibit No. 99, Witness Kern, received in evidence.)

I am asked to make whatever explanation I want to in addition to my answer to Mr. Martin, relative to Exhibits 95 to 99, inclusive.

These exhibits merely show at a glance the average short tariff route distances from origin districts under the des-

tination points covered by them and when considered in [fol. 1012] conjunction with Exhibit No. 94 may be taken as representative of the level of the all-rail rates to the destinations to which the proposed ex-river rates here in issue are intended to apply. (1038)

I have an historical statement of rates on bituminous coal from the Pittsburgh and Connellsville districts to Buffalo. (Offered as Exhibit No. 100.)

(Protestants' Exhibit No. 100, Witness Kern, received in evidence.)

Exhibit No. 100 is an historical statement of rates from the Pittsburgh and Connellsville districts to Buffalo, New York, from July 1, 1917 to the present date. The authorities for the several changes are fully set forth on the exhibit and need no further explanation. It will be observed, however, that during the entire period covered by the exhibit the differential relationship of 15 cents per ton between these origin groups was observed except from June 25, 1918 to August 15, 1919 when the difference was 20 cents. This resulted from the fact that General Order No. 28 of the Director General was originally published in blanket supplements and differential relationships in the rates disrupted. On August 15, 1919, however, new rates were published, restoring the differential relationships which had existed prior to June 25, 1918.

(1039) I have an historical statement of rates on bituminous coal from the Pittsburgh, Connellsville and Fairmont districts to Toledo, Ohio and Detroit, Michigan. (Offered as Exhibit No. 101.)

(Protestants' Exhibit No. 101, Witness Kern, received in evidence.)

[fol. 1013] Exhibit No. 101 is an historical statement of rates on coal from the Pittsburgh, Connellsville and Fairmont districts to Toledo, Ohio and Detroit, Michigan, beginning with July 1st, 1917. The authorities for the several changes are fully cited in the exhibit and need no further statement. It is to be observed that the rates from the Connellsville and Fairmont districts were always the same and that the rates from the Pittsburgh district were made the same as Connellsville and Fairmont on August 30, 1917 as a result of I. & S. 774 and have since been so maintained. The existing parity in the rates from these

districts is due to the fact that they are parts of the inner crescent. In my testimony in connection with Exhibit No. 91, the adjustment of rates from the crescents and Ohio districts to C. F. A. affected territory, within which Toledo and Detroit are located was fully explained. Now, we (1040) just selected these two points of destination in affected territory as representative of the histories of the rates to all of the affected territory.

I have the computation of average distances for which the Wheeling & Lake Erie proposed ex-Ohio river coal rates are to apply. (Offered as Exhibit No. 102.)

(Protestants' Exhibit No. 102, Witness Kern, received in evidence.)

This exhibit is merely an mathematical calculation of the average distances from the origin points of the proposed ex-river rates here in issue. It differs from an exhibit introduced by Witness Adell only to the extent that I have extended the resulting averages one decimal place and he has disregarded the fractions.

[fol. 1014] (1041) I have prepared a statement showing the comparison of the all-rail rates in cents per net ton from the Pittsburgh, Connellsville and Fairmont districts with the proposed ex-river rates from Steubenville, Martins Ferry, Ohio. (Offered as Exhibit No. 103.)

(Protestants' Exhibit No. 103, Witness Kern, received in evidence.)

Exhibit No. 103 is a statement comparing the existing all-rail rates from the Pittsburgh, Connellsville and Fairmont districts with the ex-river rates here in issue. It will be noted that the proposed ex-river rates are 64 cents lower than the all-rail rates from the Pittsburgh district to Canton and Massillon, 55 cents lower than the rates from the Connellsville district to Canton and Massillon, 89 cents lower than the Fairmont district rate to Canton and 92 cents lower than the Fairmont district rate to Massillon. To Cleveland the proposed ex-river rates is 74 cents lower than the all-rail rate from Pittsburgh, 80 cents lower than from Connellsville and 89 cents lower than from Fairmont via all-rail.

I have prepared a statement comparing representative lake cargo coal rates in cents per net ton with the proposed

ex-river rates from Steubenville, Martins Ferry, Ohio, to the ports of Cleveland, Lorain, and South Lorain. (Offered as Exhibit No. 104.)

(Protestants' Exhibit No. 104, Witness Kern, received in evidence.)

[fol. 1015] This exhibit is a statement comparing representative lake cargo rates with the proposed ex-Ohio River rates to the port (1043) cities of Cleveland, Lorain and South Lorain, Ohio, and indicating the arithmetical differences between lake cargo coal rates and the proposed ex-Ohio River rates. The proposed ex-river rates are 33 cents per ton lower than the No. 8 Ohio lake cargo coal rates. The lake cargo coal rates from the Pittsburgh district is differentially 3 cents over the Ohio No. 8, and the difference, therefore, between the Pittsburgh Lake cargo coal rate and the proposed ex-river rate is 36 cents per ton. To the extent it may be possible to barge coal from mines in the Pittsburgh district to the Wheeling & Lake Erie proposed ex-river regions for less than 36 cents per ton—I mean origins, the lake cargo coal differentials as reflected in the existing all-rail rates from Pittsburgh and Ohio No. 8 district will be disrupted. Again the lake cargo coal rate from the Connellsville district is 44 cents greater than the proposed ex-river rates and from the Fairmont district it is 56 cents greater than the ex-river coal rates. Similarly to the extent that coal may be shipped from the Connellsville, Fairmont districts to the Wheeling and Lake Erie proposed ex-river origins and there loaded in cars for less than 44 and 56 cents respectively, the existing differentials as reflected in the lake cargo coal rates and Ohio No. 8 versus Connellsville or (1044) Fairmont, will be disrupted. Moreover, if the barge charges from the Connellsville district are less than 8 cents per ton greater than the barge charges from the Pittsburgh district, the prevailing lake [fol. 1016] cargo coal differential between these origins will be disrupted. If Fairmont may be barged for less than 20 cents more than the Pittsburgh district coal and 12 cents more than Connellsville district coal, these differentials will be disrupted.

Looking at the situation from the standpoint of mines not situated on navigable streams and which must pay lake cargo coal rates reflecting the present differentials, it is

obvious that through the medium of the proposed ex-river rates coal from the river mines in the Pittsburgh, Connellsville and Fairmont districts may be shipped to Lake Erie ports at less than the all-rail charges thereto and the origin grouping principle upon which the present all-rail rates are made is destroyed.

(Mr. Martin objects to that statement unless the witness can demonstrate that to some extent the proposed rate can be used for the handling of lake cargo coal. After discussion, transcript pages 1044-1050, the following occurred:)

Examiner Curtis: Your objection is overruled. You may have an exception. You may cross-examine this witness at length (1051) upon this matter and again renew your objection at any future time you so desire. Proceed.

(Narrative resumed.)

(1059) By Mr. Orcutt:

There is also shown upon the exhibit the lake cargo coal rates from the southern high volatile districts, comprising principally the Big Sandy, Kentucky, Kanawha, Kenova-Thacker, Harlan, Hazard and the McRoberts districts, and the southern low volatile districts, consisting of New River, [fol. 1017] Pocahontas, Tug River, Clinch Valley and Virginian districts. Manifestly if lake cargo coal may be shipped from mines in the Pittsburgh, Connellsville, Fairmont districts to lake via barge and rail at lower than the all-rail rates, then the established differentials of 35 cents per ton southern high (1060) volatile districts over Pittsburgh and 15 cents southern low volatile districts over the southern high volatile districts, are widened. In view of the importance of this lake cargo coal rate differential adjustment there can be no doubt but that a disturbance of the differentials in this manner will bring with it serious consequences and perhaps upset the entire adjustment.

I have prepared a statement showing coal tonnages from Ohio mines, Pittsburgh, Connellsville and Fairmont districts and from the remainder of the inner crescent and also from the outer crescent to Canton, Ohio. (Offered as Exhibit 105.)

(Protestants' Exhibit No. 105, Witness Kern, received in evidence.)

It consists of two pages. This exhibit is merely a tabulation of the statistics as reported by the Ohio Bureau of Coal statistics, showing the movement of coal classified by the several districts within the State of Ohio; also the Pittsburgh, Connellsville and Fairmont districts and the balance of the inner crescent and the (1061) outer crescent to Canton, Ohio, for the calendar years 1920 to 1930, inclusive.

Examiner Curtis: As to whether we do not already have a somewhat similar exhibit put in by respondents, they put in figures from the same sources, but not precisely in [fol. 1018] the same manner as this. I think this is a little more detailed. As to whether it covers any more years, I do not recall. It seems to me they have one exhibit that goes back to 1919 or 1920.

Mr. Martin: I think the exhibit to which you refer, put in by the protestants covered the five years 1926 to 1930. It was in general compiled in the same way except the Ohio districts were not split up in as much detail as they are on this exhibit.

By Mr. Orcutt:

I have prepared a statement showing the coal tonnages from Ohio mines, Pittsburgh, Connellsville and Fairmont districts and from the remainder of the inner crescent and also from the outer cresent to Massillon, Ohio. (Offered as Exhibit No. 106.)

(Protestants' Exhibit No. 106, Witness Kern, received in evidence.)

Examiner Curtis:

This is similar to the other exhibit as to coal tonnages to Massillon. It will be noted that no figures are shown from the crescents to Massillon for the years 1920 to 1925, inclusive. This omission is due to the fact that the Ohio Bureau of Coal Statistics' reports for those years did not show specifically the movement of coal from the crescent to Massillon.

I have prepared a similar exhibit showing the movement to Cleveland, Ohio. (Offered as Exhibit No. 107.)

(Protestants' Exhibit No. 107, Witness Kern, received in evidence.)

[fol. 1019] (1063) This is identical with the two preceding exhibits, except it shows the movement of coal to Cleveland, Ohio.

I have prepared a similar statement showing tonnages to Lorain and South Lorain, Ohio. (Offered as Exhibit No. 108.)

(Protestants' Exhibit No. 108, Witness Kern, received in evidence.)

Exhibit No. 108 is identical with the three preceding exhibits, except that it shows the movement of coal to Lorain and South Lorain, Ohio. Now, the four exhibits, 105 to 108, inclusive, are designed primarily to show the very substantial movement of coal from the Ohio districts and the crescent to the four destinations to which ex-river rates are proposed.

Taking the year 1929 as an example, the exhibit shows that of the total movement of bituminous coal to the destinations to which ex-river rates are proposed, which amounted to 11,923,854 tons, 6,209,489 tons, or 52 per cent thereof, (1064) originated in the Pittsburgh, Connellsville and Fairmont districts. In 1930, a sub-normal year, of a total of 9,435,101 tons moving to these destinations, 4,975,165 tons or 53 per cent originated in the Pittsburgh, Connellsville and Fairmont districts. In 1929, a total of 2,019,037 tons of the movement originated in the State of Ohio, of which 1,320,505 tons originated in the No. 8 district.

In 1930 there were 1,981,226 tons of Ohio coal, of which 1,225,090 tons originated in the No. 8 district.

[fol. 1020] From these exhibits I have made a calculation by multiplying the rates from Pittsburgh, Connellsville and Fairmont districts to Cleveland, Lorain, Canton and Massillon, which indicated that the all-rail revenue for the year 1930 amounted to $6,835,404.88 and by constructing the charges arrived at by adding to the proposed ex-river rate of 95 cents to Canton and Massillon and $1.10 to Cleveland and Lorain, the proposed handling charge of 12 cents per ton I found that the revenue which the respondents in this case would derive from the lifting of coal from barges and

the handling of it to these destinations would be $4,092,372.89, which represents $2,743,031.99 less revenue than now accrues to the railroads participating in the present all-rail movement. That is on the assumption that the Wheeling & Lake Erie would get all of that tonnage, under its ex-river rates. (1065) It is just a mere calculation of what would happen if all this coal was diverted from the all-rail routes to the river routes, dealing only with the rail carriers' revenues.

I have prepared a statement of the coal tonnage for the years 1929 and 1930, from the Ohio districts, and also from the inner and outer crescent to important consuming destinations in C. F. A. territory. (Offered as Exhibit No. 109.)

(Protestants' Exhibit No. 109, Witness Kern, received in evidence.)

This is an exhibit showing figures extracted from the reports of the Ohio Bureau of Coal Statistics, indicating the volume of the movement of bituminous coal from Ohio dis-[fol. 1021] tricts and the crescents into important consuming points and districts in C. F. A. territory and is designed to give some idea of the immense volumes of coal traffic which the rail carriers now handle via all-rail routes to this territory.

I have prepared a statement of coal tonnage from Ohio district mines and from the inner and outer crescents for the (1066) years 1929 and 1930, taken from the reports of F. V. Davis, Chairman. (Offered as Exhibit No. 110.)

(Protestants' Exhibit No. 110, Witness Kern, received in evidence.)

This is an exhibit showing the aggregate tonnages reported by the Ohio Bureau of Coal Statistics for the calendar years 1929 and 1930 and denotes the movement of bituminous coal for those years into and through C. F. A. territory. Attention is called to the fact that the movement of commercial coal alone is in the neighborhood of one hundred million tons a year.

I have prepared a statement showing the percentages of bituminous coal traffic and what the revenues bore to the total revenues of the protestants during 1929 and 1930. (Offered as Exhibit No. 111.)

(Protestants' Exhibit No. 111, Witness Kern, received in evidence.) (1067)

This is an exhibit which I prepared following a letter of inquiry which I directed to representatives of the several protesting lines and denotes, first, the percentage which the coal tonnage of the lines appearing upon the exhibit bore to their total freight revenue during the calendar years 1929 and 1930. Secondly, it shows the percentage relationship of those lines coal revenues to their total revenues for the same years. This exhibit is designed, and, in fact, does show the very important place which the coal traffic bears [fol. 1022] not only to the total traffic transported by those lines but also to the total freight traffic revenues of those lines.

I made this exhibit myself from the original sources. By original source you understand letters were sent to me by the several lines which I have. I do not have the calculations upon which these percentages are based.

(Mr. Martin objects to the exhibit on that basis. After discussion transcript pages 1068-1069, the following occurred.)

Examiner Curtis: Now, let me ask you another question. Will you be satisfied if he was to supplement this thing with figures taken from the annual reports to the Interstate Commerce Commission?

Mr. Martin: Entirely satisfied if you will furnish us with that information. That would require that each figure here be supplemented by showing the total tonnage or revenue, as the case may be, and the total traffic—I mean coal traffic or the coal revenue, as the case may be.

Mr. Orcutt: Perhaps you can give that now.

The Witness: No, I do not have it. I do have it for the (1070) C. & O. Railway. They gave it to me, but I think they are the only ones.

Mr. Martin: The others merely gave you the results which you show here in terms of per cent?

A. Yes, sir; that is all I asked them for.

Mr. Martin: Yes; until he gives the supporting detail I shall reserve the right to object to the exhibit. I will not ask for a ruling now.

[fol. 1023] Examiner Curtis: Maybe you, the witness and

counsel on the other side can get together off the record and adjust your differences without requiring any ruling.

Mr. Martin: Yes, I think that may be done.

(Narrative resumed.)

By Mr. Orcutt:

I am the same Mr. Kern who testified in ex parte 103, which is the application of the steam carriers in the United States for a 15 per cent advance in freight rates. I testified in that proceeding at the initial hearings in Washington on July 15, 1931. I presented in behalf of the eastern carriers the plan by which coal rates would be increased and the existing origin differentials preserved.

I am asked to state the plan of the carriers in so far as it pertains to rates on coal, to Cleveland, Lorain, Canton and Massillon. (1071) My testimony in so far as rates to Cleveland and Lorain are concerned was as follows:

"To territory east of 'affected territory' to and including Rochester, N. Y. and the Mahoning and Shenango Valleys and to Canada via across Lake Erie car ferries a dual differential adjustment exists from the origin areas treated herein. Here rates from the southern and northern portions of the Crescents are unrelated differentially. The districts comprising the northern portion of the crescents consisting of the producing areas in Western Pennsylvania and Northern West Virginia are (1072) connected in a differential alignment with the producing areas of eastern Ohio whereas the southern portion of the crescents in [fol. 1024] southern West Virginia, southwestern Virginia and eastern Kentucky are related differentially with rates from producing areas in southern Ohio.

"From the northern districts to this destination territory which is more exactly defined as the triangular area bounded on the west by Sandusky, Ohio, the east by Rochester, N. Y., and the south by Youngstown, Ohio, it is proposed to use the Pittsburgh district rates as the bases and differentials preserved by adding to rates from related districts amounts representing 15 per cent of the Pittsburgh district rates.

"As illustrative, rates to Cleveland, Ohio, from the principal districts in this adjustment are $1.74 net ton from Ohio No. 8 and Cambridge districts, $1.84 from Pittsburgh,

$1.90 from Connellsville and $1.99 from Fairmont. 15 per cent of the Pittsburgh base rate is 18 cents and this amount added to all of the rates in the adjustment makes from Ohio No. 8 and Cambridge $2.02 from Pittsburgh $2.12, from Connellsville $2.18 and from Fairmont $2.27 thus preserving the differentials now existing. To the M. & S. Valleys and Buffalo-Rochester groups the differentials between the origin groups differ somewhat from those obtaining at Cleveland but the Pittsburgh rates will nevertheless be used as the bases for effecting the increase and the differentials which now obtain preserved (1073) in the manner described.

"To the same territory as dealt with in the paragraphs immediately preceding from the socalled Southern districts of southern West Virginia, southwestern Virginia and eastern Kentucky also from southern Ohio districts the carriers propose to use Kanawha district as the base and ad- [fol. 1025] vance all rates in the adjustment by amounts representing 15 per cent of the Kanawha rates.

"In so far as Canton and Massillon are concerned, the above general statement is applicable only to the rates from the Crescent districts, which include Pittsburgh, Connellsville and Fairmont. From Ohio No. 8 district rates to Canton and Massillon are not differentially related to rates from any other districts, and consequently it is intended to advance them a straight 15 per cent if and when the same is authorized by the Commission."

I am asked to calculate the rate from the Pittsburgh, Connellsville and Fairmont districts to Cleveland, Lorain, Canton and Massillon that would result if the carriers are granted the 15 per cent increase.

The Cleveland and Lorain rates advanced in accordance with the plan I have just recited, the Pittsburgh rate would be $2.12. Connellsville $2.18, and Fairmont $2.27. The Canton rates, Pittsburgh $1.83; Connellsville $1.89 and Fairmont $2.08. Massillon rates, Pittsburgh $1.83, Connellsville $1.89 and Fairmont $2.15. (1074)

Assuming that the proposed ex-river rates and handling charges of the Wheeling & Lake Erie Railroad are increased by 15 per cent and using a vessel rate of 45 cents from Pool 6 to Mingo Junction, I am asked to compute the

difference between the river-rail and all-rail rates to these destinations that would exist.

Based on the computations made by Mr. Durham, the barge-rail movement to Cleveland will aggregate 23 cents less than the all-rail rate from the Connellsville district. [fol. 1026] By advancing the rail and handling the factors of the rail-barge movement 15 per cent, this 23 cents would be increased to 32 cents. I get that calculation by the fact that 15 per cent added to 12 cents equals 14 cents and the $1.10 equals $1.27. Those figures, plus the river rate 45 cents makes $1.86 for the through movement. To Canton and Massillon the 13 cents difference testified to by Mr. Durham would be advanced to 21 cents. That figure is obtained by increasing the 12 cent rate 15 per cent or to 14 cents and the 95 cent rate 15 per cent or to $1.09 making the through movement 45 cents plus 14 cents plus $1.09 or $1.68.

Cross-examination.

(1075) By Mr. Martin:

I am appearing in this proceeding on behalf of the protestants. That group includes all of the protestants named in the protest to the suspended tariff except the Pere Marquette.

Q. At page 3 of the record in this proceeding Mr. Orcutt stated that it was true the Pere Marquette had withdrawn as protestant saying: "That is true, the Pere Marquette not serving either the origin or destination points involved and not serving the territory in any way asks not to be included with the protestants." Will you state whether the Buffalo, Rochester & Pittsburgh Railway Company serves either the origin or destination points involved in this proceeding?

A. They do not serve to my knowledge any lines which it has been mentioned in this proceeding will ship coal by barge; however, they do serve a portion of the Pittsburgh district.

[fol. 1027] Q. They do not carry coal to Cleveland, Canton, Massillon or Lorain?

A. Not in volume, but they do carry some coal that way.

(Narrative resumed.)

The Chesapeake & Ohio Railway Company does not serve the Pittsburgh, Fairmont or Connellsville district, (1076) nor does the Louisville & Nashville Railroad Company, and the Louisville & Nashville does not serve the Cleveland, Canton, Massillon or Lorain districts, but it originates considerable coal traffic terminating there.

The Chesapeake & Ohio Railway Company does not serve any one of these four destinations directly. The Michigan Central is a leased line of the New York Central Railroad now. They are all one.

The Michigan Central Railroad is in Michigan with a short mileage in northwestern Ohio. They also reach Canada and New York State, Illinois and Indiana, but they do not reach directly any of the origin or destination territories to which we have been referring in this proceeding.

The Norfolk & Western Railway Company, their most northerly point is Columbus, Ohio. They do not serve these origin fields directly. (1077):

I am asked in connection with any of my map exhibits, if I gave any distances from either the Pittsburgh, Connellsville or Fairmont districts to any of the four destinations. I have specific exhibits later reciting distances, I did not give any of those as to the map exhibits.

[fol. 1028] I stated in connection with my Exhibit No. 89 that the Ohio No. 8 district was bordered on the east by the Ohio River. It is a fact that there are quite a number of mines on the West Virginia side of the Ohio River opposite that district which take the Ohio No. 8 rate to Cleveland. The P., W. & K. branch of the Pennsylvania Railroad. It is in the vicinity from about Weirton down to Benwood, W. Va. I do not know the specific delimitations of it.

I am asked whether the differentials which I have mentioned that exist between the origin groups, Fairmont, Pittsburgh and Connellsville applying to hauls to these four destinations have always been as large as they are today. The differentials as they exist today, as I recall it (1078) have remained the same since the commission's decision in I. & S. 774, except, of course, during the period when differentials were ignored from June 25, 1918, to August 15, 1919. However, the fact can be adduced from my Exhibit No. 94 giving the histories of the rates.

Q. Well, for example, from the Connellsville district,

Cleveland over Youngstown, just prior to July 1, 1917, the rates were 85 cents to Youngstown and $1.15 to Cleveland, were they not?

A. I think I misunderstood your question. You were referring to the destination relationships?

Q. Yes. I probably misled you in my question.

A. I can say that they have varied.

(Narrative resumed.)

When the rates were on a considerably lower basis the differentials were also on a lower basis, due to the fact that in going through these general rate changes, such as ex [fol. 1029] parte 74, Reduced Rates, 1922, and General Order No. 28, we preserved origin differential relationships which made it impossible for us to, at the same time, preserve any destination relationships which might then exist and give the carriers what the General Orders were intended to give them by way of an increase or reduction. [fol. 1030] (1079) I am asked is it not a fact that there is no differential relationship between the rates from Ohio No. 8 Pittsburgh and Connellsville to Warren and Buffalo, on the one hand and the rates from the same origin districts to Cleveland, on the other hand. Up until these general rate changes there was a rather well defined and for many years a constant relationship between the rates from these districts to Cleveland and the rates to Buffalo. As to whether it is a differential relationship. That is argumentative. I do not know. I have heard it contended yes and no; but the fact is we had to ignore the relationship, whether it was fixed differentially or what-not, throughout these general changes and consequently it has lost its identity as a relationship. I would contend that there is no relationship today that could be called a differential relationship.

Unfortunately there is a considerable movement of coal from Buffalo by water under what has been described as cross-haul coal on the lake front. (1080) These protestant carriers participate in the rail hauls to the lakes by permitting that movement.

Speaking of what has occurred up to date, it has not broken down the commercial rate structure to Buffalo. But if I may continue that answer, I personally deem our rate structure in grave jeopardy and have recommended to the

traffic executives that something be done promptly by way of diminishing the present spreads between the all-rail rates and the rail and lake rates to Buffalo, Detroit and other ports and perhaps as soon as the large coal structure [fol. 1031] is free from attack the executives are going to take that under further consideration.

For many years there has been a movement via lake to what we have termed all-rail territory, but that a decision of the Interstate Commerce Commission resulting in a 20 cent reduction in the rates from the northern districts which permitted the carriers to enter into the so-called compromise arrangement which reduced the southern rates 10 cents per ton, the cross hauling, as you term it, of coal, on the Great Lakes has (1081) reached alarming proportions. Prior to that time they were not giving us any particular trouble. Of course, that probability that it would reach alarming proportions was called to the attention of all the carriers by some of the northern protestants here in the last lake cargo coal rate case, I. & S. No. 2967.

Mr. Carbine there demonstrated by his Exhibit 131 and his Exhibits 132 and 133 that such would be the result of a reduction of the rates from the southern fields below $1.91 and $2.06 to these Lake Erie ports, and I think all of his predictions up to date have been fulfilled except a reduction in the all-rail rates and we are holding our breath right now.

I am asked if it is true that the all-rail rates have stood up up to date and the lake cargo rates have stood up without change. The lake cargo coal rates resulting from that proceeding are not the same as the ones we got today. The result of I. & S. 2967 was that the Interstate Commerce Commission ordered the suspended tariffs to be canceled and as the thing was moving along through the courts the [fol. 1032] railway companies fixed a new differential and when it got to the Supreme Court they declared that the case was moot and refused to decide it.

(1082) In view of this very prediction which was made in I. & S. 2967, the southern carriers reduced their lake cargo rates by 20 cents a ton and later in compromise with the northern carriers, who are also protestants here, increased it 10 cents a ton, leaving them with a net reduction of 10 cents per ton under the previous rates of $1.91 and $2.06, and that adjustment, first the reduction of 20 cents and later a net reduction of 10 cents has greatly stimulated

this cross haulings of coal from the Lake Erie ports to Buffalo.

On my Exhibit No. 91, I show in red the districts taking the rate of $2.39, to Toledo, known generally as the inner crescent.

I am asked to tell from looking at the map or from any information I have, what the length of that origin blanket is from we will say Kiski Junction in the Pittsburgh district down to Pine Knot in northern Tennessee. I would not attempt to give that in miles, but it is a considerable distance. As to whether it is really a tremendous blanket area, it certainly covers a lot of territory. I do not know if it might be 500 or 600 miles in length. (1083) I do not know whether this map was drawn to scale or not. It was not pasted over a scale. From this vast origin territory the rate is the same to the various sub-districts in affected territory. The rates are the same to the several destination groups, and likewise the same statement may be made of the outer crescent, which is shown in blue on the map. [fol. 1033] I can not give you any information as to the distances to Toledo, Ohio from the nearest district or the nearest mine in the inner crescent group and the farthest district or the farthest mine in that group. I have not that in my head. I believe in I. & S. 774 the Commission had something to say about the scope of the crescent adjustment, but as to specific distances, either from the shortest group or the shortest mine or the longest group or the longest mine, I can not say.

I can not say what the scope of the origin territory is that is covered by this 50 cent differential inner crescent over Orio to affected territories. (1084) No more than what appears on the map. I can tell you the average distance from the whole caboddle to Toledo or to any other point there, but not from any given district.

As to my Exhibit 93 and as shown by the correction, the mines as mines are not shown on this exhibit.

As to whether I profess to testify here as to any competition or as to the extent of competition, if any, between any particular mine known as an inland mine and any particular mine known as a river mine I hardly appreciate the significance of your question. We are here dealing with a rate concentrated coal producing area and I know as everybody else knows, whether the coal happens to be located on

the river or inland from the river does not indicate or prove that there is competition or there is no competition. The fact is that mines in the Pittsburgh district generally compete one with the other and with mines in the other districts.

[fol. 1034] I am not giving you for the record here any specific instances of shipments from any mine, inland mines, in this area to Cleveland, Massillon or Lorain, to compare with specific records of shipments from river mines to the same points of destination. (1085) I have not attempted to testify to that, or about the character or quality of the coals in the two groups of mines. Not all of these rails shown are emphasized by red on this exhibit in the Pittsburgh district. They extend through the Pittsburgh, Connellsville and Fairmont districts.

As to whether some of these rails are also in the Greensburg district, the Greensburg district as such is known only in the east bound coal rate adjustment, and I am inclined to believe that the Greensburg district westbound is in the Connellsville district. To the extent that these lines of railroad run into the Greensburg district and have mines in that district, such mines enjoy a differential under the Pittsburgh district eastbound. As I recall it, there is a 10 cent differential there. It is generally correct that those lines that are in the Greensburg district would be generally speaking the most easterly lines shown on my Exhibit which have been emphasized in red, (1086) approximately east of a north and south line drawn through Greensburg.

I have not attempted to tell you how many mines there are on any of these numerous branches that appear on the exhibit or on the various sub-branches from them.

[fol. 1034½] Generally speaking the long lines throughout all that territory have numerous coal branches which are indicated by the word "branch" or the abbreviation "Br." at numerous places on this exhibit.

As to my Exhibit No. 94, it shows the rate from the Fairmont district to Canton, Ohio of $1.84. That is not true as to the Baltimore & Ohio. They publish variant rates there. As to whether it is $1.82 from the Fairmont district to Canton by the Baltimore & Ohio, the Fairmont district, on their own railroad, from the Fairmont district on the Monongahela they publish the rate that is shown here.

(1087) The Baltimore & Ohio serves a number of important mines in the Fairmont district directly with their own rails.

I do not recall the rate from the Fairmont district to Massillon, Ohio by the Baltimore & Ohio direct. If you were to tell me that it was $1.65, I think that is right. It is the Connellsville basis. That is 22 cents under the rates made by the other carriers reaching Massillon. As to whether the difference of 22 cents has broken down the all-rail structure to Massillon, it has created a lot of discussion among the several railroads. As to whether it has broken down the rail rate structure to Massillon over the other rails, what it has done or what it will do I can not say. As to what it has done, nothing so far because the lines have delayed taking any action. I certainly know that the Pennsylvania and the Pittsburgh & Lake Erie are seriously considering doing something to adjust that situation. I do not know how long that rate has been in effect, by the Baltimore & Ohio. (1088) I would not be surprised if it has [fol. 1035] not been in effect since February 15, 1926. I do not know whether the Baltimore & Ohio mines originate a tremendous volume of coal in the Fairmont district. They originate a good deal of coal there. I do not think they originate nearly as much as they think they should originate. They easily originate enough to take care of the demand at Massillon for coals from the Fairmont district.

I am asked what is the purpose of my Exhibits 95 to 99 inclusive. They are the mileage computations. I stated I believed that they were proposed to show generally the volume of service which the carriers perform in connection with the rates to the four stations at which the ex-river coal rates or to which ex-river coal rates are proposed.

As to whether they intended to show the number of mines (1089) under each of these various districts which might in any sense be considered competitive with the river mines in the Fairmont, Pittsburgh or Connellsville districts, of course, they will include river mines equipped with rail facilities as well as mines that are solely served by rail. They will exclude all mines having river tipples only.

I am asked how is it that comparing the mines in the Pittsburgh district on these various exhibits I have 307 mines from the Pittsburgh district, Exhibit No. 95; 297

mines in Exhibit 96; 264 mines in Exhibit No. 97; 297 mines in Exhibit No. 98; and 293 mines in Exhibit No. 99.

That is due to the fact that the rates of the three publishing roads, so far as the origin territory is concerned are not constant. In some instances one line will publish a rate [fol. 1036] from a short line connection to one destination and in another case they will not publish from that short line connection. So too in the instance, I believe, of the P. R. R. the mines on their own railroad are not always given the same rate.

By that I mean they are not given routes to all of the four destinations involved. That would make a change in the number of mines in a single origin (1090) district as to the various destinations. That would also explain the discrepancy as between Exhibit 97 and the remaining exhibits concerning the mines in the Fairmont district.

As to Exhibit No. 97, to Massillon showing only 179 mines in the Fairmont district and the other exhibits in this group showing 227, I think the variation there is due to the fact that the rates published by the P. R. R. from the B. & O. mines and by the B. & O. from the P. R. R. mines varies and this exhibit shows precisely the number of active mines taking the going rate to these destinations and none other.

I built up these exhibits from my Exhibit No. 162 in I. & S. Docket No. 23240 and Docket 23241. The volume that is handed to me is a copy of that exhibit. I am asked about it being a correct copy. (1091) There is one mileage I myself changed in pencil. If there is no other correction than that, it is a true copy. On page 44 contains a pencil correction, which is the only correction that was made in the exhibit before it was filed.

[fol. 1037] (1092) By Mr. Martin:

Generally speaking, I do not have any familiarity at first hand with these various mines here shown on Exhibits 95 to 99 inclusive, as to their location, their capacity, production, and so forth. There might be some individual mines I do know something about. I have compiled these exhibits from reports made to me by the carriers serving those mines, and the term "active mines" as used in this group of exhibits refers to and includes all mines which produced and

shipped coal in any quantity during the 15 month period, January 1, 1929 to March, 1930, inclusive. The idea was to get only the mines which shipped as much as one carload of coal during that 15 month period, irrespective of the destination. As to whether it does not purport in any sense to include only mines which have shipped to the four destinations involved in the tariff, doubtlessly, many of them never shipped there.

[fol. 1038] (1093) Q. Now, your exhibits refer to the fact that they also include mines on the Montour, the Pittsburgh, and West Virginia and the P. C. & Y. and the Winfield Railroad in the Pittsburgh district and mines on the Monongahela Railroad in the Connellsville and Fairmont districts. Is there any way we can tell from the exhibits where those mines are included; that is, whether they are included under the Baltimore & Ohio, the P. R. R. or the Pittsburgh & Lake Erie?

A. Well, they are included three times if the three roads published the rates.

Q. You mean to say, then, if a mine was located on the Monongahela Railroad in the Connellsville district, for example, it would be counted as three mines on this exhibit?

A. Yes, sir; in order to give it the proper weight in the average.

Q. Now, can you tell how many of those mines there are that have been counted three times?

A. I can not tell you definitely. The tariff authorities there will give that to you. I do know this that mines on the Monongahela and Connellsville district, as a general rule the rates are published by the three proprietary roads and in order to (1094) get the right average for each road through the short line connections it is necessary to figure them for the account of each road.

Q. Three times?

A. Yes, sir.

[fol. 1039] (Narrative resumed.)

As to whether there are any mines on any other short lines, or jointly owned railroads, which are counted more than once, the Pittsburgh & West Virginia have rates via more than one railroad. The Montour Railroad has. The mines on the Pittsburgh & West Virginia have been counted as many times as there are rates published by the Trunk Lines.

It can not be more than three. The same is true about the Montour. Up to a maximum of three times for those mines because there are only three Trunk lines in the district. As to the mines on the P. C. & Y. I can tell you definitely that there is two. (1095) On the Winfield road, there is one.

I have examined a volume which is my Exhibit 162 in Dockets 23240 and 23241, and I find it to be a correct copy of that exhibit as filed in that proceeding. This exhibit is the source from which I prepared all of my exhibits Nos. 95 to 99 inclusive, in the instant case, but it was necessary to go to the rate tariffs in order to find out where to locate certain mines because in our lake cargo coal rate adjustment the origin group boundaries differ from those obtaining in the commercial adjustment. So that sometimes a mine in there is shown in the Pittsburgh district because that was made in connection with the lake rates, whereas we had to include that mine in the Connellsville district in the Commercial adjustment.

Mr. Martin: With that explanation, Mr. Examiner, I should like at this time to offer in evidence as part of Mr. Kern's cross-examination his exhibit 162 in Docket 23240 [fol. 1040] and Docket 23241.

Examiner Curtis: Any objection?

(1096) (Respondents' Exhibit No. 112, Witness Kern, received in evidence.)

(After further discussion, transcript pages 1096 to 1098, the following occurred:)

(1098) Examiner Curtis: I think respondents ought to have the right to bring in anything up to date they want to.

(1099) Mr. Martin: I found one error on your Exhibit No. 95, Mr. Kern, which may make some difference. As I calculate the total number of miles shown in the next to the last column, it should be 45,361, instead of 35,361. Will you agree to that?

A. Yes, sir.

Q. The average mileage should be 199.8 instead of 155.8?

A. Yes, sir.

(Narrative resumed.)

I was asked this morning whether the Kanawha River extends into the New River district and I answered that it did. I did not mean by that to imply that the navigable

section of the Kanawha River extends into the New River district, because I do not know. I do not know where the navigable section of the Kanawha River stops, other than the Government publication says it runs something (1100) like 90 miles from the mouth of the river.

As to whether Gauley Bridge which is the dividing line between the Kanawha district and the New River district is approximately the head of navigation on that river, I do [fol. 1041] not know, but Gauley Bridge itself is in the New River district and takes the New River rates.

Mr. Orcutt: If that is the approximate extent of navigation we are willing to accept the statement.

Mr. Martin: I may be in error; we will check it in a moment.

Q. Do you know where Montgomery, West Virginia, is; in which district?

A. I am afraid it does not appear on my map. I do not know the location of that town. It may not be a railroad town.

Mr. Martin: We have here, Mr. Examiner, and I think it should appear in the record so there will be no doubt about it, a Government publication issued by the chief of engineers, entitled "The Ohio River" which contains this statement on page 267. I will put it in and if somebody wants to strike it out all right.

"Kanawha River. Slack water navigation is made available to a point about two miles below Loop Creek Shoal about 88 miles about the mouth of the river by 10 locks and dams."

Can you locate a point 88 miles above the mouth of the River on your map?

A. No, sir.

(Narrative resumed.)

(1101) As to whether it would be in the Kanawha district or the New River district, this is the annual report of the chief of engineers, United States Army for the year 1930. This shows that navigation extends up to Montgomery, West Virginia. It does not appear on my map. I know Pink Creek, West Virginia, is in the Kanawha district and Mont- [fol. 1042] gomery is five miles up the river from Pink

Creek. Whether or not that takes you over the boundary I can not tell you from my map.

I am handed a table appearing at page 267 of the publication entitled "The Ohio River" from which I will see that Deep Water, West Virginia is south of Montgomery, which I have described as the head of navigation. Deep Water is right on the boundary line of the Kanawha district. It might be shown in my Exhibit No. 91 as in the Kanawha district, but it is very slightly in. If it is either in the Kanawha district or on the boundary line, I rather think that it is correct then that navigation does not extend into the New River district on the Kanawha River.

(1102) The lake cargo rate from the Connellsville district is $1.54 per ton. I heard Witness Osborn state the charge which he proposes to make for towing coal from the 6th pool on the Monongahela River to Mingo Junction. He stated that to be 45 cents per ton. 6th Pool, Monongahela River is in the Connellsville district. I have heard the testimony given here as to the proposed charges by the Wheeling & Lake Erie at Mingo Junction of 12 cents per net ton. I know that the proposed rate to Cleveland and Lorain is $1.10. The sum of these three factors is $1.67.

As to whether I think anyone could profitably employ this rate to Cleveland to move lake cargo coal from the 6th pool when there is (1103) an all-rail lake cargo rate in from the Connellsville district to the lake front of $1.64, I do not think it could be done on that calculation.

[fol. 1043] The lake cargo rate from the Fairmont district is $1.66. As to whether I think there is any money to be made by using our proposed ex-river rates for lake cargo coal when it would cost a shipper of coal at Cleveland $1.67 to move it to the lake front in that way, no; he evidently would lose a cent a ton on that.

Q. Irrespective of the fact that you would not be able to reach the Fairmont district at that charge but would have to pay more for the additional towing charge from the point in the Fairmont district to 6th pool; is that correct?

A. I do not know anything about that. I do not know how far a river rate can be blanketed.

Q. The 6th pool on the Monongahela River is north of the Fairmont district, is it not?

A. That is correct.

Q. So, to the extent there might be an additional mileage involved, there might — an additional charge involved?

A. There is that possibility.

(Narrative resumed.)

The lake cargo rate from the Pittsburgh district is $1.46. The ex-river rate proposed by the Wheeling to Cleveland (1104) and Lorain is $1.10 and the lifting charge is 12 cents. That is $1,22. That would leave only a margin of 24 cents to cover the water haul, if you substract that sum from the $1.46. I do not recall the average mills per ton mile for the water haul produced by the rates quoted by Mr. Osborn for [fol. 1043½] the haul to Mingo Junction on the one hand, and Conway and Colona on the other. He said he reduced his——

I will accept your statement that the distance from 6th pool to Conway and Colona is 100 miles and to Mingo Junction 150 miles by water. If that is the fact, yes. I do not know.

I heard his statement, or saw his exhibits put in evidence here, that he would charge 30 cents for the haul to Conway or Colona and 45 cents for the haul from Martins Ferry. That would figure approximately 3 mills per ton mile in either case.

Q. Do you think any one could make any money on that basis by trying to use the proposed ex-river rate to Cleveland and (1105) Lorain for the handling of lake cargo coal to the lake front from the Pittsburgh district?

A. You mean they would make a rate of 30 cents a ton from the Pittsburgh district to Mingo?

Q. It would be approximately that.

A. It would be approximately 6 cents a ton higher than the all-rail lake cargo coal rate.

(Narrative resumed.)

I heard the testimony in this proceeding or statement of counsel at least, to the effect that respondents did not propose to apply this rate to lake cargo coal. I heard them, but, as a matter of fact, such a situation is outside of my understanding because we have never yet had a lake cargo coal rate higher than a local commercial rate.

[fol. 1044] I heard Mr. Duffy not only testify as to the difficulty which he might be involved in at Cleveland if the pro-

posed ex-river rate went into effect, but I also heard him testify that the proposed ex-river rate to Youngstown would produce the same effect. I am asked if I believe that to be equally true, that is the statement concerning Cleveland. (1106) My views on that Youngstown rate is that the Commission went much lower than they should have done. However that may be, the potential effect is perhaps the same in the case of Youngstown as in the case of Cleveland.

I am asked to refer to my Exhibit 103. I have testified that the Baltimore & Ohio has reduced its rate or put in a rate from its Fairmont field to Massillon of $1.65 in comparison with a rate of $1.37 * via other lines. That has wiped out the Fairmont differential or the difference over Connellsville to Massillon entirely. The rates are equal. It is correct that the rates are equal so any differential that ever existed there has been wiped out by the voluntary action of the Baltimore & Ohio as to mines on its line, and that has also served to reduce the differential Fairmont over Pittsburgh to Massillon from 28 cents to 6 cents, so that by our voluntary action that differential has either (1107) been wiped out entirely or materially reduced in one case or the other and I stated that up to date at least the rate structure has not been broken down by that action. But on that, Mr. [fol. 1045] Martin, I would like to call attention to the fact that on my Exhibit No. 97, it will be noticed that the distance of the B. & O. Railroad from the Connellsville district is substantially greater than the distance from the Fairmont district.

[fol. 1046] As to whether it has altered the differential relationship which formerly existed between those origin districts, the B. & O. felt they could not carry a higher rate for the shorter distance than for a longer distance.

Q. Now turn to your Exhibit 104. You state in the heading of that exhibit that it is a statement comparing representative lake cargo coal rates with proposed ex-river rates from Steubenville, Martins Ferry, Ohio, and so forth, to the ports of Cleveland, Lorain and South Lorain, Ohio. As a matter of fact there are no lake cargo rates published from the southern high volatile fields and the southern low volatile fields to Cleveland or Lorain, are there?

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* All parties agree that this should be $1.87 and that the witness probably so stated.

A. There used to be to Cleveland, but they have been canceled out. I imagine that that heading ought to be corrected accordingly. The southern high volatile and southern low volatile rates today obtain only to the ports of Cleveland and Sandusky, Ohio.

(1108) Q. Well, will you suggest a heading that will appropriately cover that?

A. Statement comparing representative lake cargo coal rates in cents per 2,000 pounds—I think the thing can stand as it is. It is the ex-river rates that apply to Cleveland and Lorain.

(Narrative resumed.)

As to whether if it be understood that the rates shown from the southern high volatile and southern low volatile fields do not apply to Cleveland or Lorain, that is correct. I am asked if the lake cargo rates I have shown here cover assembly service at the mines. They take the coal right up to the unloader.

[fol. 1047] They cover all the service that is necessary to take the coal from the mines to the docks. I know something about the privileges that are given shippers in lake cargo coal in the matter of demurrage. Under the lake cargo coal demurrage rules the shipper on an average agreement makes his settlement only semi-annually. (1109) I think it is the first or last of July, as compared with monthly settlements under the commercial rates under the average plan. The shipper of lake cargo coal gets 5 days free time, as compared with two days free time under the commercial rates. As to whether after the expiration of the free time the shipper of lake cargo coal only pays one dollar a day demurrage, I do not recall the specific charge. That sounds reasonable. The shipper of commercial coal pays $2 for the first four days and $5 per day thereafter.

I am asked if I made any computation to show the mileages that are covered by these differences shown in the last column of my Exhibit 104. I did not put them in my direct examination. I am asked whether as a matter of fact, that 86 cents difference covers (1110) a difference in mileage of about 324 miles, southern low volatile fields over the distance to be covered by the suspended rates. I do not know the average of all the districts. Some of them are pretty long and some of them are not quite so long. I am asked

if I made any computations to show what those distances were. I put them all in evidence in the Lake Cargo Coal Rate case. I do not remember them now. They can be figured from the big exhibit. It took me an awful long time to do it. I do not have them in mind. I will admit they are substantially farther than the distance from Mingo Junction to Cleveland. That would be true as to the southern [fol. 1048] high volatile fields. A difference of 71 cents which I show in my last (1111) column would cover a haul of much longer than the haul from our river division points to Cleveland or to Lorain. On the other hand the Ohio No. 8 distance to Cleveland is somewhat less than the distance from Mingo to Cleveland.

I am asked to refer to my Exhibits Nos. 105 to 108 inclusive, and asked if in general it is not true that the second pages of those exhibits as to Ohio No. 8 mines show the reverse of the situation shown on the first page; in other words, on the first page the tonnage is increased, while from 1926 on the tonnage was rapidly decreasing. Well, looking at Exhibit No. 105, 1926 is about the best year on there; then, of course, we got into the strike year and the tonnages went down and thus far have not come back to the 1926 level. I think that is true generally speaking of the other exhibit.

I said in my direct testimony that all of that tremendous tonnage shown on my Exhibit 110 as moving from mines in the Ohio District and the inner and outer crescent moved into and through C. F. A. territory. (1112) If you care to have it done that way, the exhibit should be corrected to show that. As to whether it is not correct as it stands, it is a statement of coal tonnage from Ohio mines, also the inner and outer crescents for the years 1929 and 1930. The column sub-captioned "C. F. A. Territory" ought to be stricken. The "to" and the "C. F. A. Territory." It means into and through C. F. A. territory. The reason for that error is this all appears on Mr. Davis' report.

Q. Just at the close of your direct testimony you gave us some calculations to show what the difference would be un- [fol. 1049] der the 15 per cent advance as to Cleveland, Lorain, Canton and Massillon. Have you made a similar calculation as to what the difference would be as to Colona and Conway rates to Youngstown and points grouped there-

with? Those too would be affected in the same way as the Cleveland, Canton, Massillon and Lorain rates, would they not?

A. If you were treated on their own bottom.

Q. You know of no reason why they should not be treated in the same way as the proposed Wheeling & Lake Erie rates, do you?

A. I never heard either the Pennsylvania or the Pittsburgh & Lake Erie express themselves as did Mr. Durham when he stated that—I hope I say it correctly—there should be no (1113) differential relationship between the ex-river rate, on the one hand, and the all-rail rates on the other.

Q. I think you perhaps misunderstand me. Let us make a brief calculation. The proposed rate, Colona and Conway to Youngstown is 77 cents, is it not?

A. Yes, sir.

(Narrative resumed.)

The lifting charge that we have assumed for the purpose of this proceeding is 12 cents, that would be 89 cents. 15 per cent added to that would be approximately 13- cents flat. That would make $1.02 for the revised lifting and ex-river rate to Youngstown. Taking the Connellsville rate and applying 15 per cent, the all-rail rate to Youngstown and applying 15 per cent to that would produce 20 cents a ton advance. That would make it $1.54 and subtracting $1.02 would leave us 52 cents to cover the water haul.

I have heard Mr. Osborn here that there would be a [fol. 1050] (1114) 30 cent charge for the water haul.

Q. There must be some error in that calculation. The Connellsville all-rail rate to Youngstown is $1.42 today?

A. I was using Pittsburgh.

Q. Well, I asked you about Connellsville.

A. All right. Then I will give you Connellsville. That would go to $1.62.

Q. $1.62 and $1.02 would leave 60 cents to cover the water haul; deducting from that Mr. Osborn's quotation of 30 cents would leave an advantage to Youngstown for the river and rail shipper of 30 cents per ton.

A. Yes, sir.

Q. As compared with 23 cents today?

A. Yes, sir.

Redirect examination.

(1115) By Mr. Orcutt:

Q. Mr. Kern, the computations that Mr. Martin led you through having to do with the all-rail versus (1116) the water-rail rate to Cleveland and other points, using the rate of 45 cents from Pool 6 to Mingo, the results of those computations would be very different, would they not, not not only numerically, but in their application to other issues here, if you used the rate of 31 cents testified to by Mr. Morris this morning?

A. Oh, yes, it would reduce the aggregate charge via barge and rail by 14 cents a ton.

(Narrative resumed.)

The Baltimore & Ohio rate applies only from mines on the B. & O. R. R. in the Fairmont district. The P. & L. E. [fol. 1051] and the Pennsylvania's relationship between their rates from Connellsville and the Fairmont district have remained constant.

Q. For instance the B. & O. rate to Massillon, Mr. Martin interrogated you as to the effect that had upon the adjustment and that it had not broken down the adjustment up to the present time. The moment the P. & L. E. and the Pennsylvania Railroad make that rate to Massillon, then that adjustment is broken?

(1117) A. Yes, sir.

Q. That is what you meant by the breaking down of the adjustment?

A. Yes, sir; not only that but it is apt to upset the arrangement at other places besides Canton and Massillon.

By Mr. Martin:

As to whether for five years that has gone on and there has been no meeting of the rate up to date, I will answer you in this manner, for the 15 years I personally know the Louisville & Nashville Railroad has maintained lower rates from the inner crescent and outer crescent mines into Peoria, Illinois, and points taking the same rates. In the last two months all of the other crescent roads have met those rates.

As to whether as far as this Massillon situation is concerned it has not been met in the last two months or at any time within the last five years, but there has been an awful lot of threats to meet it.

(An adjournment was taken until the following day, September 22, 1931.)

[fol. 1052] (1118) (The hearing was resumed at 10 o'clock A. M., September 22, 1931, pursuant to adjournment.)

RALPH E. JAMISON was called as a witness on behalf of protestants and, having been duly sworn, testified as follows:

Direct examination:

The Witness: I am the director and sales agent of the Jamison Coal & Coke Company of Greensburg, Pennsylvania, and director and sales agent of the South Union Coal Company of Greensburg.

The protest of the above named protestants respectfully shows:

1. Jamison Coal & Coke Company is a corporation owning and operating three mines in Westmoreland County, Pennsylvania, having a normal output of two million tons of bituminous coal per annum with a coal reserve at said mines of approximately forty million tons and is also the owner and operator of two mines in Marion County, West Virginia having a normal output of one million five hundred thousand tons of bituminous coal per annum with a coal reserve at said mines of approximately ninety million tons.

2. South Union Coal Company is a corporation and is the owner and operator of one mine in Fayette County, Pennsylvania, having a normal output of seven hundred thousand tons of bituminous coal per annum and a coal reserve at said mine of approximately nine million tons.

[fol. 1053] (1120) The Pennsylvania mines of the Jamison Coal & Coke Company and the mines of the South Union Coal Company are on the Pennsylvania Railroad. The two West Virginia mines of the Jamison Coal & Coke Company are on the Baltimore & Ohio Railroad. None of

the mines of either company is on the Allegheny or the Monongahela River. While the protestants hereinabove named are not affiliated corporations *are not affiliated corporations*, they have many stockholders in common and their products are sold through a common selling agency and office. They have a common interest in the subject matter of this protest.

3. The companies hereinabove named have during recent years shipped substantial tonnages of bituminous coal to northern Ohio points and destinations to which the proposed rates in Wheeling & Lake Erie Railway Company and Lorain & West Virginia Railway Company under Tariff I. C. C. 1669 will apply.

Under normal industrial conditions the consumption of coal of the character produced by the protestants would reach the destinations named in much greater quantities than at the (1121) present and protestants believe that unless the prior existing tariffs are disturbed they will be able to secure in the future markets at the points to which said tariff applies for much greater tonnages of coal than in the past.

The proposed tariffs shown in I. C. C. 1669 will be available to all coal mines having or providing loading facilities on the Allegheny, Ohio and Monongahela Rivers to mines [fol. 1054] along the Youghiogheny River tributary of the Monongahela if the Youghiogheny is slack-watered as is now contemplated. The coal produced by such mines is competitive in character with that produced at the mines of the protestants and in the event the rates proposed under Tariff I. C. C. No. 1669 are permitted to be made effective a discrimination will be created in favor of the mines having facilities for shipment by water as against inland mines such as the mines of your protestants and the effect will be to deprive your protestants of their present existing business to Northern Ohio points and deprive them of any opportunity to secure future business from consumers of their product there located.

4. The mines to be preferred by the establishment of the rates shown in Tariff I. C. C. 1669 already enjoy all rail rates to the destinations named and upon the basis of the present existing rail tariffs are competitors of your protestants for coal tonnage for delivery to the northern Ohio

points mentioned in said tariff. The establishment of the (1122) proposed rates under Tariff I. C. C. 1669 in conjunction with the water transportation of the coal to the Ohio points of rail loading will so substantially reduce the cost of the transportation of coal to the destinations named that your protestants will be unable to longer compete with the producers having water shipment facilities and such rates will create an undue preference and discrimination. [fol. 1055] Mines having facilities for shipment by water already enjoy to destinations tributary to the Rivers a market for their produce which cannot be competitively reached by inland mines and in the event the tariff proposed under Tariff I. C. C. 1669 is made effective a substantial part of the remaining market available for the coal produced by the mines of your protestants will be definitely lost.

5. If the principle sought to be established by the proposed rates under Tariff I. C. C. 1669 is to prevail there are other communities similarly located to which like privilege would necessarily have to be extended, notably the industrial users in the Detroit and Buffalo districts and like discriminations and preferences under similar conditions to such districts would result to the further demoralization of the producers of coal owning inland mines such as are the mines of your protestants and the present competitive position of your protestants and all other inland coal companies would be completely destroyed. (1123)

Wherefore your Protestants pray that the carriers named be denied the privilege of the rates contained in their Supplement No. 1 to their Freight Tariff No. 166, I. C. C. 1669.

Jamison Coal & Coke Company, by Ralph E. Jamison, Sales Agent. South Union Coal Company, by Ralph E. Jamison, Sales Agent.

[fol. 1056] Cross-examination.

By Mr. Martin:

We have three mines mentioned of the Jamison Coal & Coke Company. All three of them are in the Greensburg rate district, and the Greensburg freight rate district enjoys an advantage over the Pittsburgh district east bound. The differential (1124) is 15 cents a gross ton under the

Westmoreland and most of the Pittsburgh District. I could not tell you exactly where the line comes.

We ship possibly 30 to 40 per cent of our products of those three mines to the commercial trade. I would say that less than 10 per cent of those products of those mines goes to railroad fuel.

Neither the eastbound tonnage as to which we already enjoy an advantage or the railroad fuel would be directly affected by these rates.

I am asked to give the percentage of the production of those three mines which goes to Cleveland. At the present time we are shipping very little to Cleveland. In the coal year 1929-1930 (1125) we shipped over 300,000 tons to Cleveland and some scattering tonnage. That was track delivery coal; it did not include any Lake cargo coal. It was all commercial coal to Cleveland. It was byproduct coal. I could not tell you offhand what we shipped in the year beginning April 1, 1930, to Cleveland. It was a very small amount; very much smaller than 300,000 tons.

[fol. 1057] We have shipped in the current year since April 1, 1[illegible] a very small percentage. During that time and before there were no disturbances in the rate structure to Cleveland. It has been the same rate structure that we have today. (1126)

As to what our shipments to Lorain are from these three mines, nothing that I know of that I can recall now. That answer applies for the last two or three calendar years except the Lake cargo coal. The shipments to Canton and Masillon for commercial delivery have been very small. That answer also applies for the last several years.

We will ship this year for Lake cargo, I would say, 250,000 tons from these three mines. The South Union Coal Company will ship 500,000 tons.

I am asked what we shipped for Lake cargo during the year 1929 or 1930 or both. (1127) I cannot answer that question definitely. It was not as large a tonnage as we are shipping this year. A very small percentage of the total output of these mines went to the four destinations named in the suspended tariffs, that is, Cleveland, Canton, Lorain, and Massillon for the coal year beginning April 1, 1930. I would say it was under five, although I have not the figures in my head. I will say that small percentage has obtained thus far in the coal year 1931; the remaining

95 per cent, or whatever the figure may be in excess of that [fol. 1058] amount, has been distributed among the eastbound shipments, railroad fuel shipments, Lake cargo shipments and commercial shipments to other points north and westbound. (1128)

The South Union Coal Company has one mine in Fayette County, Pennsylvania in the Connellsville freight rate district. That mine has shipped nothing at all to Cleveland, Canton, Massillon or Lorain.

It produces by-product coke. It is shipped to one customer on a reasonably long term contract. It has several years to run yet. (1129)

During that period of several years, the entire production of that mine will be devoted to the uses of that customer. We have one contract of a similar nature affecting either in whole or in part of the mines of the Jamison Coal Company. It has a preferential call on the production of one mine. The maximum limit is 500,000 tons. It is about sixty to seventy-five per cent of the present capacity of the mine, substantially equivalent to the amount that has been produced by that mine annually over the past five years. At present and for the past four or five years that coal under the contract has been shipped to Baltimore, Maryland. (1130) We have no such contract for consumption in Cleveland, Massillon or Lorain at the present time. That answer applies to all of the mines concerning which I have testified.

[fol. 1059] I am familiar with the proposed ex-river rate to Youngstown of 77 cents per net ton in a general way. I have never read the full report of the Commission relating to that rate; I have seen excerpts from it published. It is my understanding that the Pittsburgh & Lake Erie and the Pennsylvania are committed to the publishing of an ex-river rate of 77 cents per net ton on coal from Colona and Conway to Youngstown.

We have shipped coal to Youngstown from the mines concerning which I have testified (1131); not in large amounts. I cannot give the amount in round figures for the coal year 1929 and 1930; they were insignificant. I have not ever attempted very seriously to get into the Youngstown market with our coal.

I would like to say something at this point, if you will permit me: We have three mines in Westmoreland County.

Two of them we have only owned since last August, August 16, 1930, and we have spent most of the years since that date in equipping them to produce by-product coal; we have not had much opportunity to do anything with that coal. These coals have been established in the markets as by-product coal in some places where they have been sent but the industrial depression made it almost impossible for us to get the coal into very many places; no demand for it.

Q. You make the statement at the beginning of section 4 of your protest that "the mines to be preferred by the [fol. 1060] establishment of the rates shown in Tariff I. C. C. 1669 already enjoy all rail rates to the destinations named". Of course, you understand, do you not, that many of these mines ship by water only?

A. You mean the mines located on the Monongahela? (1132)

Q. On the rivers.

A. Yes; I appreciate that.

Q. Paragraph 3 of the protest, the third sub-paragraph, you refer to the fact that the proposed tariffs shown in I. C. C. 1669 will be available to all coal mines having or providing loading facilities on the Allegheny, Ohio and Monongahela Rivers to mines along the Youghiogheny River tributary of the Monongahela if the Youghiogheny is slack-watered as is now contemplated. As a matter of fact, it is not possible for any mines located on the Youghiogheny River to ship coal by water at the present time, is that true?

A. That is my understanding.

(Narrative resumed.)

I do not know of any improvements which are actually going forward for the slack-watering of that river. I understand the engineers have been working on it for some time. There has been no improvement authorized that I know of; it is in the embryonic stage. As to the Alleghenys, I could not tell you offhand the number of mines that are available on that river. There are nothing like the number that are available on the Monongahela. (1133)
[fol. 1061] As to whether there are not more than three on the Allegheny that can use the river, I do not have any direct knowledge of that. I did not make a protest in the

Youngstown case similar to the one I am making here. I did not appear there either as a witness or a protestant in that suit.

I understand if we do want to get into the Youngstown market we will find there an advantage in favor of the river and rail producer of coal who is shipping to that market after the 77 cent rate becomes effective. I am not clear it will be as much of an advantage as the river and rail producer will have at Cleveland, Canton, Massillon and Lorain. There will be an advantage. (1134)

I have never heard of the railroads which serve our mines reducing any of their rates to permit us to reach these points of consumption which are now served by the river mines. So far as I know, during all of this period that the river mines have been expanding and shipping down the Monongahela and Ohio Rivers, the commercial rate structure from our mines to those points of consumption along the rivers have remained the same. I never paid any attention to that. There are no competitive rates that enable us to reach these points that I know of.

Redirect examination.

By Mr. Orcutt:

I am not very well acquainted with the rail facilities up [fol. 1062] and down the Monongahela. I know that lines of railroad follow both shores of (1135) the Monongahela River for miles up and down the river. I know that the rail facilities are there available if the mines wish to equip themselves with a rail tipple. In our case, if we desire to equip ourselves with a rail tipple we are not situated so that we could do it. Also in answer to Mr. Martin, where I stated we did not appear in the Youngstown case, that was due to the fact that the rate proposed there was $1.02 which rate I knew would not affect our competition. We knew that would not hurt us any. Had the rate proposed been less than $1.02 I am inclined to think we would in all probability have appeared.

We ship a considerable tonnage to Detroit that goes all-rail in the winter time; by rail and water in the summer time. (1136)

If the river rate from mines on the Monongahela to Mingo and the rail rate from Mingo to Cleveland is insuf-

ficient so that water-rail and water rate to Detroit is less than our rail and water rate to Detroit in the summer time and less than our all-rail rate to Detroit in the winter time, that will affect us.

Detroit is a very much more important consuming point for the produce of our mines than is Cleveland or Lorain, Canton or Massillon. The same thing is true of Buffalo. By saying the same thing in referring to the situation as to Detroit, the same situation to Buffalo would be true.

[fol. 1063] If either the combination river-rail and lake and river and rail to Buffalo were less than our rail and water rate to Buffalo in the summer time, and our rail rate in the winter time, we would be cut out of the Buffalo business. It would go to the mines on the Monongahela River. (1137)

Recross-examination.

By Mr. Martin:

On that point at Detroit, it is true that the large part of the consumption of our mines at Detroit is under the long term contract of which I have spoken. Under that long term contract the purchaser of the coal is obliged to bear the transportation charges but he is not obliged to buy the coal. He can find many ways to evade the contract if it becomes too burdensome to him. In some respects it is a contract binding him as a purchaser. It is a rather peculiar contract.

In our shipments to Buffalo we utilize the Lake cargo rate to ship coal during the navigation season. We ship to the port of Ashtabula. That is a substantial amount of coal moving on the Lake cargo rates. As to whether we find that that reduces our cost of transportation to Buffalo under the all-rail rate to Buffalo, we have no exact knowledge of the rate. It is done on specifications of the buyer. He pays the freight charges. (1138)

It is a fair presumption that if he has required us to ship that way instead of all-rail it is for his advantage financially.

[fol. 1064] To my knowledge, that has not broken down any of the all-rail rates from our mines to Buffalo.

We also utilize the Lake Cargo rates to Detroit during the navigation season. To my knowledge that has not broken down the all-rail rate to Detroit.

I am asked if we secure an advantage or does the purchaser of the coal secure an advantage by the use of the Lake cargo coal rate to Detroit under the all-rail rate. Presumably so, although we have no knowledge of the advantage. He specifies that movement. That is all we know. Going back to the question of the Youngstown case, I stated to Mr. Orcutt that had I known the rate might be fixed below $1.02 as proposed by the carriers, we might have intervened and protested. I think I have the knowledge that the Commission had the right to find the rate proposed by the carriers unreasonably high and to suggest lower rates. In view of that knowledge I still refrained from intervening. (1139).

By Mr. Orcutt:

We have two mines on the B. & O. in the Fairmont district.

Q. You are aware, are you not, that if the 77 cent rate is published at any time later you will then have full right and opportunity to intervene?

A. I cannot answer that question, Mr. Orcutt. I do not know the rules of the Commerce Commission well enough to say.

Q. If it should develop that you do have that right, and [fol. 1065] the 77 cent rate were published, you would protest it?

A. I think we would, yes, sir. (1140)

By Mr. Martin:

I was asked on the last redirect examination by Mr. Orcutt if we had some mines on the B. & O. rails in the Fairmont district. Those are the two mines in Marion County, West Virginia. I believe it is correct that those mines enjoy a rate to Massillon of $1.65 per net ton. As to whether that is 22 cents lower per net ton than the competing mines in the Connellsville district which must ship over the other lines of railroad (1141), I do not know the Connellsville rate to Massillon. We have never been interested in it.

My recollection is that our own rate is $1.65 from the Baltimore & Ohio mines, and that the rate we have to Canton is $1.82. (1142)

JOSEPH D. CLARKE was called as a witness on behalf of the protestants, and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Fitzpatrick:

I have stated my full name for the record. I am Superintendent of freight, transportation, Baltimore & Ohio lines, with headquarters at Baltimore. I have had that title since August 1, 1929.

I am familiar with the conditions on the Baltimore & Ohio system as to surplus equipment and data along that line. (1143)

[fol. 1066] I am asked to state how the number of open top cars owned by the Baltimore & Ohio Railroad on a particular date during 1930 compared with the number of open top cars owned by the Baltimore & Ohio on a lake date in 1929. For purposes of comparison in answer to that inquiry, I am taking September 4, 1931, compared to September 6, 1929. We had 320 more open top cars owned on September 5, 1930 than on September 6, 1929. On September 4, 1931, compared to September 5, 1929 we had 721 open top cars less. These are cars owned.

Included in that classification are all types of open top cars, self-clearing hoppers, flat bottom tight end, side dump (1144) hoppers and drop end gondolas, which are classified as mill gondolas. That is the type of equipment that is constructed primarily for steel products, which are used for coal loading where necessity requires. Flat cars are not included. It includes cars that are generally suitable for coal loading or for the handling of steel.

The reason for taking different dates in those years is it is the date that the equipment is tallied from the superintendent of car service records, which is done once a week, and as it happened the nearest period to the comparative period on which the tally was taken, which was Monday each week, that was September 4 compared to September 5, 1931 versus 1930, or September 4 compared to September 6, 1929, the date the tally was taken. It has no significance except it is merely the tally as taken from the records.

It is correct from my testimony to state that the (1145) [fol. 1067] open top equipment owned by the Baltimore &

Ohio during the first part of September, 1931, was actually less than that owned during a like period of 1929.

I have information as to the amount of idle equipment or stored equipment on the Baltimore & Ohio system at intervals of six months beginning at January 1, 1929.

On January 1, 1929 there was a reported surplus of 9,297 serviceable freight cars stored on the Baltimore & Ohio. That is serviceable coal cars. This is the heading of the statement. I am speaking of coal cars now. On July 1, 1929, 2,141; January 1, 1930, 7,232; on July 1, 1930, 9,004; January 1, 1931, 13,713, and on July 1, 1931, 9,761.

I am asked to describe the difference between coal cars, as I understand that term, and mill gondolas. Mill gondolas are flat bottom, drop end, medium (1146) height side cars, constructed primarily for the purpose of handling steel products, but they are of a type that are acceptable for coal loading and are so used where occasion requires.

Coal cars would include all hopper cars or gondolas. The generally accepted term of coal cars is under that classification. By gondolas of that class I mean those that have higher sides than the mill gondolas. The mill gondolas run 36 to 42 and 46 inches to the sides and they are drop end cars.

I am asked to read into the record the idle mill gondolas [fol. 1068] that were stored on the Baltimore and Ohio. On January 1, 1929, 1,178. On July 1, 1929, there was no reported surplus. They were in active demand and, therefore, there was no reported surplus. On January 1, 1930, 2,388; July 1, 1930, 793; January 1, 1931, 3,789; July 1, 1931, 1,325. (1147)

I am asked to read the total of idle freight equipment of all kinds during the period that I covered.

January 1, 1929, 23,506; July 1, 1929, 7,133; January 1, 1930, 24,729; July 1, 1930, 22,693; January 1, 1931, 39,110; July 1, 1931, 27,688.

The totals that I read included the coal cars and the mill gondolas as to which details have already been given, and other freight cars. It is correct to say that the cars covered by my study and my testimony embrace cars that were suitable for transportation of products on the dates that are specified. They are stored available serviceable equipment.

My study embraced Baltimore & Ohio cars that were stored on the Baltimore & Ohio system alone. The Balti-

more & Ohio during that period did not have equipment stored on any other line in the fore part of the period mentioned, but we had as (1148) of July 1931 on the B. R. & P. Railroad principally. I would take it that is either a subsidiary or an affiliate af the Baltimore & Ohio system at the present time.

I have also prepared information as to idle freight loco- [fol. 1069] motives from January 1, 1929, to date.

This report of idle servicable freight locomotives includes locomotives engaged in freight service and I presume, although separation has not been made, some switching locomotives are included therein.

On January 1, 1929, 203; on July 1, 1929, 122; on January 1, 1930, 339; on July 1, 1930, 377; on January 1, 1931, 413; and, on July 1, 1931, 466.

Cross-examination.

By Mr. Martin:

I am generally familiar with the volume of traffic (1149) handled by the Baltimore & Ohio from period to period, but of course I could not recall any specific period. I know generally whether a particular year was a heavy traffic year or a light traffic year. The year 1929, at least the period from January 1, 1929, to July 1, 1929, was a very good traffic year. That would be reflected even in the statement of the disappearance of the surplus cars practically. At the beginning of that period there were 9,297 coal cars stored on our railroad. That is also the beginning of the period covered by my statement here this morning. As of the end of that period, July 1, 1931, there were only 9,761 coal cars stored on our railroad. That is an increase as between the beginning and end of the period that I have selected here of only 464 coal cars, (1150) over the number which were stored at the beginning of the period on January 1, 1929. The period centering around July 1, 1931, is well [fol. 1070] known as a depressed period industrially. I would say that would be a period practically comparable to in January.

The occasions when drop end or mill gondolas are used for the transportation of coal are not very frequent, and frequently those conditions might arise from a capacity standpoint of the car. As an illustration, at certain periods

the demands for so-called 50 ton cars are greater than they are in a period of good car demand or good coal market. Under those conditions it is frequently necessary to put in a hundred thousand capacity drop end gondolas, which answers the same purpose.

The use of mill type gondolas or drop end gondolas is relatively infrequent and relatively unimportant, particularly where a road maintains what we call an adequate coal carrying equipment. The Baltimore & Ohio strives to do that at all times (1151) and have done so, I think, generally.

It is very important from the standpoint of the Baltimore & Ohio to have on hand at all times an adequate supply of coal cars in order that there be no coal car shortage. Coal car shortages always result in decreased shipments on a railroad.

The month of July 1, 1929, which shows the lowest number of coal cars stored is just about the peak of the industrial boom which was deflated in the fall of 1929. As a matter of fact, I think we began to notice it in late September or early October, 1929. That is, we began to notice a falling off in freight traffic about October so that on July 1 we were still in that industrial boom. That, of course, [fol. 1071] had its reflex action on a slight surplus (1152) on the demand for coal cars. That, I would say, is the principal cause for the low number of cars stored on the Baltimore & Ohio at that time. It had wiped out our surplus mill gondolas entirely and reduced our surplus of coal cars down to 2,241.

Examiner Curtis:

I am asked as to whether we nearly always have some surplus coal cars. Over the yearly period there would be, generally speaking, a slight surplus from one class to another, but there will be a sustained heavy demand for coal and in those periods we would hardly be able to and we have not been able in previous periods of a similar character to hold or maintain a surplus. The B. & O. finds it necessary to resort to use of equipment of other lines.

Redirect examination.

By Mr. Fitzpatrick: (1153)

January of any period is usually a light demand period, and invariably your equipment will run up and generally

reflect your surplus, your maximum surplus, during that period. That is, following your Christmas and New Year's holidays and the falling off of the coal business for the early part of the winter. If the demand is there it produces increasing shipments following January, which generally work out to a decrease along about March or April. That is speaking over a representative period. That has not been so notable recently.

As to whether from the standpoint of showing the situation for the entire year, it might be necessary to select other [fol. 1072] dates, that is a matter as to how you want to make a showing. I can show it for all months. I have got these reports and make them throughout the whole season.

Mr. Fitzpatrick: Mr. Examiner, if we may have the privilege, I would like to show as near a representative situation for the Baltimore & Ohio throughout this period covered as is possible without going into too great detail. The testimony so far of Mr. Clarke covers merely intervals of six months' periods. It might be helpful on this point to the Commission and also to the parties, (1154) if we had the privilege within 10 days to file an additional statement which would cover another breakdown of six months, alternating, beginning first, perhaps, with March 1, 1929, so that in the aggregate we would have in the record figures as to surplus equipment on a particular date every three months beginning on the first of January 1929. I was wondering if I may have the privilege of offering such statement within the period of 10 days.

Examiner Curtis: If it can be furnished and prepared before the hearing is closed well and good. If not, it can be filed (1155) after the conclusion of the hearing, 10 days being the maximum limit.

By Mr. Martin:

Q. Mr. Fitzpatrick questioned you upon the fact that January was a poor coal month. How do you explain the fact that between January 1, 1929, and January 1, 1930, taking those as comparative dates, the coal cars stored on your [fol. 1073] line of railroad decreased from 9,297 to 7,232, a net decrease of about 2,065 cars.

A. The only explanation I could make is that the data that

produces the situation would indicate there was perhaps a great demand right at that particular period for some reason or other because the cars owned did not fluctuate to any extent.

Q. January 1, 1930, was in the first few months of the depression.

A. Of the depression.

Q. Which, as you stated, struck us about September or October?

A. Yes, sir.

JOHN F. PEACH was called as a witness, and, after being duly sworn, testified as follows:

Direct examination.

By Mr. Fitzpatrick:

I am employed by the (1156) Baltimore & Ohio Railroad; supervisor of statistics and expenses, mechanical department. I have been employed in the operating department of the Baltimore & Ohio Railroad for 39 years.

I have prepared or caused to be prepared under my direction, information as to the purchase of certain types of equipment by the Baltimore & Ohio during recent years. Statistics on that point are under my direct jurisdiction in the office in which I am employed.

I can give you information as to the deliveries of hopper cars purchased by the Baltimore & Ohio during the years [fol. 1074] 1929, 1930 and 1931.

On hopper cars, we entered into a contract on May 17, 1929, for 2,000 cars. Deliveries on those were made in 1929 of 1,790; in 1930, 210 were delivered, completing the contract.

I have similar information as to mill gondolas purchased or delivered by the Baltimore and Ohio during the three years previously mentioned. (1157)

Contract of May 17, 1929, for a thousand cars. 774 delivered in 1929 and 226 in 1930. May 16, 1929, a contract entered into for 800, all of which were delivered in 1930. December 13, 1929, another contract for 200, all of which were delivered in 1930. February 1, 1931, a thousand cars —180 of them delivered in 1931 and the balance still to be completed.

Work is not actively being continued in connection with the contract of February 1, 1931. The depreciation * came along and we had to stop it. The direction * of cars under that contract is discontinued, to be taken up at a later date. The thousand cars covered by the February 1, 1931, contract were being constructed at our Keyser shop at Keyser, W. Va. In other words, all of the cars covered by the contract, including the 180 cars that were delivered during 1931, were to be erected in the shop of the Baltimore & Ohio at Keyser, West Virginia.

I am asked if there is any explanation to be made in re- [fol. 1075] spect of the equipment (1158) or materials that were to be used in connection with cars covered by the contract to which I was last referred. I would say on this one thousand cars under February 1, 1931, contract were being built with trucks and air brakes removed from other cars dismantled. In other words, they are being reconditioned and new car bodies put on them. So that, referring principally to the trucks, they are merely taken from retirements of other equipments.

The 0-18 type of gondola cars were retired in order to provide for these trucks. All of them were steel gondolas of 100,000 pound capacity.

On September 5, 1928, we entered into a contract for a thousand box car bodies. What I mean by box car bodies is that we dismantled a like number of steel gondola cars, took the trucks and air brakes from them, sent them to the builders and they put the box car bodies on them. 717 of those were delivered in 1929. The balance were delivered prior to that or in 1928.

The object (1159) in referring to a contract entered into during 1928 was because some of the cars under that contract were delivered in 1929. On April 4, 1929, we entered into a contract for 2,000 additional box car bodies; 1,979 were delivered in 1929 and 21 in 1930. On August 20, 1929, there were 1,500 more contracted for. They were all delivered in 1930. On October 18, 1930, contract for a thousand more box car bodies. They were all delivered in 1930. [fol. 1076] That is all of the box cars.

I am asked if there is any explanation in reference to the

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* All parties agree that this should read depression and construction and that the witness so stated.

equipment used in the erection of all of the box cars covered by the contracts to which I refer. They were built from second-hand trucks. They were the trucks and air brakes removed from dismantled steel gondola cars. (1160)

My testimony covered the total deliveries of hopper cars, mill gondolas and box cars delivered by the Baltimore & Ohio during 1929, 1930 and 1931. In other words, there was no other equipment of that character purchased by the Baltimore & Ohio for delivery to the Baltimore & Ohio on contracts during that period.

The Baltimore & Ohio purchased two Malley type freight locomotives through contract entered into with the Baldwin Locomotive Works on November 24, 1930. One was delivered in 1930 and the other one in 1931. That is the only locomotive that was purchased or delivered in the three year period of the freight type. The Baltimore & Ohio did not purchase any switching locomotives suitable for freight handling during the period mentioned. They did not purchase any switching locomotives at all during that period. (1161)

During the 1929, 1930 and 1931 period the Baltimore and Ohio purchased mill gondolas and they have the drop ends as Mr. Clarke explained.

J. F. Donahoe was called as a witness on behalf of the protestants and, having been duly sworn, testified as follows:

[fol. 1077] Direct examination:

The Witness: My name is J. F. Donahoe. I am secretary and treasurer of the Carnegie Coal Corporation with offices in the Oliver Building, Pittsburgh, Penna.

I have been engaged in the coal business for over thirteen (1162) years, the past eight and a half years in Pittsburgh, Penna. I was employed by the Carnegie Coal Company from April 1, 1923, to October 21, 1925, as auditor; from October 22, 1923 to October 3, 1930, as chief accountant and assistant director of sales for the receivers for the Carnegie Coal Company; from October 4, 1930, to date as secretary and treasurer of the Carnegie Coal Corporation.

I also served as secretary to the First Mortgage Bondholders' Committee of the Carnegie Coal Company, from their organization in March, 1926, to their dissolution in June, 1931. During the receivership and up to the present time, my duties have been, and still are, such that I am in close contact with the selling and marketing of coal.

The Carnegie Coal Corporation was incorporated May 16, 1930, under the laws of the Commonwealth of Pennsylvania, having a capital stock of $6,000,000 all issued and outstanding.

The Carnegie Coal Corporation is an independent company, having no affiliations other than its own subsidiary companies, and is in no way connected with the United States Steel Corporation through its subsidiary the Car-
[fol. 1078] negie Steel Company.

The Carnegie Coal Corporation owns and operates coal properties located in Pennsylvania along the lines of the Pennsylvania Railroad loading westwardly from Pittsburgh, Penna., to the Penna.-West Virginia State Lines, comprising as of April (1163) 30, 1931, 8152 acres of coal land containing approximately 56,885,000 tons of available bituminous coal, and six mines with an annual capacity of 2,200,000 tons. All six of the mines are inland mines. In other words, they are not accessible and cannot be made accessible to river transportation. In fact, none of the coal land owned by the Carnegie Coal Corporation can be made accessible to river transportation.

The operations of the Carnegie Coal Corporation are located in what is known as the Pittsburgh district and the natural markets for the coal produced by the said Carnegie Coal Corporation are north and west of Pittsburgh, Penna., which includes the destination territoy to which the Wheeling and Lake Erie Railroad proposes to establish the ex-river rates here in issue. The all-rail rate from Pittsburgh, Pa., to Cleveland and Lorain, Ohio, is $1.84 per net ton, and to Canton and Massillon, Ohio, $1.59 per net ton, whereas the ex-river rates proposed by the Wheeling and Lake Erie Railroad in its tariff I. C. C. 1669 are $1.10 per net ton to Cleveland and Lorain, Ohio, and $.95 per net ton to Canton and Massillon, Ohio, a difference of $.74 and $.64 per net ton respectively.

[fol. 1079] It is obvious from the above comparison of rates that the ex-river rates proposed by the Wheeling and

Lake Erie R. R. in its tariff I. C. C. 1669 will permit bituminous coal produced at mines having access to river transportation to move at a less total transportation charge than the all rail (1164) transportation charge which must be paid on coal produced at mines which do not have access to river transportation.

As I have already stated, our mines are inland mines and do not have access to river transportation, therefore the approval of the rates suspended in I. & S. Docket 3619 will give to our competitors located on the river a distanct advantage which we could not overcome, and will practically eliminate the Carnegie Coal Corporation from the markets located in this important consuming territory in Ohio. The condition of the coal industry is such that we cannot afford to lose even one market, no matter how small it is. The territory in question is a natural market for coal produced in the Pittsburgh district and any barrier established to prevent us from selling our product in this market would be hazardous to money invested in inland mines in the Pittsburgh district with the result that the investment in our property of over $6,000,000. would be seriously jeopardized.

In view of the above we ask that the Commission should not permit these proposed rates to become effective.

Cross-examination.

By Mr. Martin:

[fol. 1080] The total production of these mines for the years 1926 to 1930, inclusive, by years, is

1926	699,754 tons	
1927	139,454 tons.	(1165)

I am dropping the fraction of a ton here,

1928	154,165 tons
1929	665,574 tons
1930	809,802 tons.

I do not have the percentage figures that go eastbound. I do not have a distribution of it. The corporation who has the figures and this is all that is available to me now, became the active operators of this property in October, 1930. I did not bring any monthly figures since that time with

me. We do not keep a distribution of the way the coal goes. We are working on that now, building up our records.

I am not in charge of the sales today. It was during the period of the receivership that I assisted in the direction of sales. From my knowledge of sales at that time, I would estimate between 25 and 30 per cent of our coal went west. (1166) That does not include Lake cargo coal. About 30 percent of our production went to the lake, about 20 percent east or 25 percent east rather, and the balance would be local and north.

[fol. 1081] That would be about 20 percent local and north bound. I have included in these various percentages railroad fuel. I do not have that distribution to the City of Cleveland for the receivers. At that time the receivers were trying to operate with a minimum of expense. They kept no statistics of any kind.

I cannot give any accurate idea of the relative volume of coals produced by our company mines which go to Cleveland, Massillon, Canton or Lorain. I know that we carry today about seven Cleveland industrial accounts. I cannot tell you how much that seven industrial accounts purchase per month. (1167)

They purchase the coal for steam coal. These mines do not make a by-product coal. Their coal is sold only for steam purposes. We have had considerable coal moving to the Youngstown district, including points as far north as Warren, Ohio, in recent years. Larger in volume than the shipments to Cleveland, Canton and Massillon combined. I know of the proposition to establish a rate ex-river of 77 cents per net ton to the Youngstown district from Conway and Colona. Our company was not in existence at the time of the establishment of an ex-river rate to Youngstown district. (1168) The receiver of the predecessor company did not make a protest. The predecessor was in the hands of a receiver. Its stockholders or officers were entirely inactive and scattered. No protest that I know of as respects these six mines which I have testified about, was made in that proceeding involving the proposed [fol. 1082] ex-river rate to Youngstown and points grouped therewith.

I am asked if we have given consideration to what would happen to this considerable volume of tonnage from our mines to the Youngstown district if the proposed ex-river

rate to Youngstown is finally established. If that rate is established we would still have the privilege under the law, as I understand it, to enter our protest against its adoption. Supposing the Commission should deny that or similar protests and permit the rate to become effective without further proceedings, the situation competitively brought about by the establishment of that rate would practically amount to the same condition as the proposed rates now in issue. (1169)

I have heard only a day and a half of the testimony in this proceeding.

The proposed ex-river rate to Cleveland is $1.10. I heard the testimony of Mr. Burham that the proposed lifting charge at Mingo Junction, Ohio, for the transfer of coal from barges to cars would be 12 cents. Adding that to the other makes $1.22.

I did not hear the testimony of Mr. Osborn to the effect that he had quoted a rate of 45 cents per net ton for towing from the 6th pool to Mingo Junction. (1170) I did not hear the testimony of the consumers' witness, Mr. Loray, or Mr Hanan to that effect.

For the purpose of this calculation, and assuming the rate of 45 cents would apply for that towing, the total of the three figures 1.10, 12 cents and 45 cents is $1.67.

[fol. 1083] The 6th pool, Monongahela River, is in the Connellsville District.

I do not have the all-rail rate from the McConnellsville district to Cleveland. I believe if you were to say it was $1.90, it is. The difference between the all-rail rate and these river-rail charges on the 6th pool would be 23 cents. That is, the river-rail charges would be 23 cents under the all-rail. Making a corresponding calculation as to the Youngstown district, the proposed ex-river rate is 77 cents, and assuming the same lifting charge, to make the comparisons proper (1171) it would be 12 cents more for the lifting. If I will assume what the record shows, that there is a quotation of 30 cents for the movement of coal from the 6th pool to Conway and Colona, we would then have a total of $1.19 for river-rail transportation from the 6th pool to the Youngstown district. I do not know what the all-rail rate is from the Connellsville district to Youngstown. I do not know that rate.

As to whether it is $1.42 I do not know. Assuming it is,

the difference between the $1.42 all-rail and the $1.19 river-rail is 23 cents. The same result as was obtained from the preceding calculation, so that, if these assumptions are correct, we would meet the same situation in the Youngstown district where our tonnage is considerable, as we would meet at Cleveland by the establishment of these two ex-river [fol. 1084] rates.

By Mr. Orcutt:

The rate from the Pittsburgh district to Cleveland is $1.84. I did not hear the testimony of Mr. Morris yesterday.

Q. As to the amount the Weirton Steel Company paid for getting their coal from pool 6 to Weirton. In these computations that Mr. Martin has led you through in determining the river-rail costs, will you use a cost of 31 cents on the river instead of 45 cents. What, then, is your river-rail rate to Cleveland from pool 6?

A. $1.53.

(Narrative resumed.)

(1173) The difference between that and the all-rail rate from Connellsville of $1.90 is 37 cents. If these figures are right then our disadvantage then is actually 37 cents as against 23 cents computed by Mr. Martin.

(1176) G. B. Seyms was called as a witness on behalf of the protestants, and after being duly sworn, testified as follows:

Direct examination:

The Witness: My name is G. B. Seyms and I am here in the interest of the Westmoreland Coal Company, which has an interest in this proceeding. For 22 years I was connected with the sales department of the Westmoreland Coal Company. For the last ten years of these twenty-two I was Manager of Sales in responsible charge of all sales work. For the past two years I have been General Sales Manager [fol. 1085] of the General Coal Company. The General Coal Company is now exclusive sales agent for the Westmoreland Coal Company.

The Westmoreland Coal Company, a Pennsylvania Corporation, with headquarters at Philadelphia, Pennsylvania, is a producer (1177) of gas coal and its mines are located in Westmoreland County, Pennsylvania, in the so-called Pittsburgh region rate district. The names of the mines operated by the Company are as follows:

Adams Mine, Irwin, Penna.
Biddle Mine, Irwin, Penna.
Riley Mine, Rillton, Penna.
Denmark Mine, Claridge, Penna.
Export Mine, Export, Penna.
Hutchinson Mine, Yukon, Penna.
Magee Mine, Yukon, Penna.
Marchand Mine, Lowber, Penna.
McCullough, Claridge, Penna.

Westmoreland Coal Company owns approximately 10,500 acres of unmined coal, tributary of the above described mines. This acreage contains approximately 105,000,000 tons of unmined coal. This coal is a high volatile, low sulphur coal, known as gas coal, which is used in manufactured gas plant by-product ovens, locomotive steaming and for many industrial purposes.

It is the same kind of coal as that which moves down the [fol. 1086] tributaries of the Ohio River and on which the present proceeding proposes to name rates into the eastern Ohio territory.

In the year 1913 the Westmoreland Coal Company mined and shipped five million tons of coal, but this tonnage was seriously reduced during the war by transportation difficulties (1178) and since that time by the gradual reduction of railroad freight rates to competing fields, so that during the decade from 1921 to 1930, the average production was 2,778,000 tons per annum.

The tonnage shipped in 1930 was approximately 2,520,000 tons, of which 1,670,000 tons moved eastward and 850,000 tons moved westward.

The mines of the Westmoreland Coal Company are all located inland from the rivers tributary to the Ohio River and it is, therefore, impossible for this company to take advantage of the rates herein proposed.

All of the mines located along the tributaries of the Ohio River at present enjoy all rail rates eastward, which are the

same as the rates enjoyed by the Westmoreland Coal Company, although the distance from the mines of the Westmoreland Coal Company into eastern consuming territory is substantially less than that from the mines which will benefit from the rates requested in this petition.

In the past the Westmoreland Coal Company enjoyed rates to eastern consuming territory 15 cents less than the mines along the Monongahela River. Now all these mines [fol. 1087] have been granted rates on a parity with the Westmoreland rate, also a large number of mines in the so-called Pittsburgh district, not on the Monongahela River have had a decrease of 15 cents in their *rate* eastward, putting them on a parity with the Westmoreland Coal Company, so that the tonnage with which they have had to compete has been constantly increased. During the twenty odd years that I have been associated with the Westmoreland Coal Company I do not know if a single change in rates which benefited the Westmoreland Coal Company, be decreasing differentials into competitive territory.

The rates proposed in this proceeding will very greatly increase the difficulty of the Westmoreland Coal Company doing business in Ohio. Although these rates as at present published apply only to five specific points in Ohio, the approval of these rates will probably lead to the establishment of ex-Ohio river rates to other important consuming points, so that in reality the entire Ohio consuming territory is involved in this proceeding.

We submit an exhibit.

Examiner Curtis: That will be Exhibit 113.

(Protestants' Exhibit 113, Witness Seyms, received in evidence.)

The Witness: This exhibit shows the comparison of the rates from the mines of the Westmoreland Coal Company in the Pittsburgh district with rates proposed in this proceeding. It shows that there would be difference in rail [fol. 1088] transportation to Canton and Massillon of 64 cents and to Cleveland and Lorain of 74 cents.

During my long connection with the bituminous coal business in a sales capacity I have found that decreases in differentials in freight rates by little as 10 cents to 15 cents per ton will produce changes in the origination of coal delivered in any consuming district.

The ex-Ohio River rates here proposed, in connection with estimated costs of water transportation and transfer, will give a substantial advantage to coal that would move by these ex-Ohio River rates in comparison to coal that could move by Pittsburgh region all-rail rates, and will result in a decided decrease in the possible production of the Westmoreland Coal Company.

Due to the changes in freight rates, which increased the volume of tonnage competing in eastern territory, Westmoreland Coal Company decided that they would attempt to develop more intensively their trade in the area to which the rates proposed in this proceeding apply, and to this end, through their sales agent, the General Coal Company, a new branch office was established in Pittsburgh, several years ago, with the express purpose of further increasing the tonnage moving into this area. The granting of the proposed rates would tend to nullify the effort which is being put forth.

The above mentioned mines of the Westmoreland Coal [fol. 1089] Company have a capacity at present of at least four million tons per year, all of which potential production is of a quality of coal similar (1181) to that moving down the tributaries of the Ohio River, and the establishment of rates proposed will render it more difficult to make use of this capacity.

It is evident from the facts above set forth, the gra-ting of the proposed reduced rates on bituminous coal published in Wheeling and Lake Erie Tariff I. C. C. 1669, would seriously increase the present severe difficulties encountered in marketing their coal and the Westmoreland Coal Company therefore respectfully requests that temporary suspension of these rates, already ordered, be made permanent.

By Mr. Orcutt:

I referred to the five districts to which these proposed rates were applicable. I had in mind the Lorain and South Lorain as two separate destinations. I believe the tariff filed gave those five points.

Cross-examination.

By Mr. Martin:

Q. Mr. Seyms, you have dwelt at some length on your present difficulties in marketing. Those difficulties, of

course, have not been brought about in any way by these proposed ex-river rates up to this time, have they?

[fol. 1090] A. No, sir.

Q. They have been brought about, as I understand it, principally by reductions of all rail rates from competitive fields, is that true?

A. That (1182) is right.

Q. Those reductions were in large part made by voluntary action of the carriers serving those competitive fields, is that true?

A. No, sir. I think every one of them were made on a hearing before the Commission.

Q. You refer——

A. I refer to the extension of the Westmoreland rate clear down into the Fairmont district. I refer to the rate which put in some Pocahontas coal and I refer to the rate allowed the West side coal to come in.

Q. In other words, if you are correct in your statement that the Commission has approved it, then by Commission action the blanketed rate which you enjoy has been stretched out over considerably more territory in recent years than was the case formerly, is that true?

A. That is true.

Q. Do you ship any coal to the lake for Lake cargo movement?

A. Yes, sir.

Q. Of course you are familiar with the carriers which are protestants here, having voluntarily reduced the rates from the southern high volatile and low volatile fields to the lake or lake cargo, are you not?

[fol. 1091] A. Yes, sir.

Q. Is that of some disadvantage to you?

A. (1183) Yes, sir, it is.

Q. How much lake cargo coal do your mines ship annually?

A. I could not answer that offhand, but I would say from one hundred to one hundred and fifty thousand tons a year.

Q. Through what port does it go?

A. Most of it goes through Cleveland and Ashtabula.

Q. To what destinations beyond?

A. It goes up the lakes and part of it will go into Buffalo.

Q. A substantial part of it to Buffalo?

A. Yes, sir.

Q. So far as you know that use of the lake cargo rate to

Buffalo has not broken down the all-rail rate to Buffalo, has it?

A. Not as yet.

Q. Now, you spoke of these mines—I believe there are six of them, are there not?

A. Nine.

Q. Nine mines shipping coal similar to that shipped down the tributaries of the Ohio River. How many of these mines produce by-product coking coal?

A. All of them.

Q. Do you mean to state on the record all nine of these mines ship coal to furnaces or other producers of by-product coke?

A. Yes, sir.

[fol. 1092] (1184) Q. To what extent does any or all of these lines ship coal for that purpose to Cleveland, Canton, Massillon or Lorain?

A. We ship no coal to those points at the present time for by-product purposes.

Q. How long have you been selling coal from these mines for by-product purposes. I mean your company?

A. I would not say; but I would say some of the original coal went in 20 years ago.

Q. In other words, these mines have not produced coal suitable for by-product purposes for the last 20 years?

A. Yes, sir.

Q. Now, if you do not ship for by-product purposes to these four destinations, for what purpose do you ship coal to them or any of them?

A. Most of the coal that we are shipping up into that territory at the present time has gone for industrial purposes to a steel plant; that is, the size coal into the steel plant and a great deal of slack; that is, for steam purposes.

Q. All of that coal is going into those four destinations for steam purposes, is that true?

A. Most of it at the present time.

Q. And the remainder is going in for gas purposes?

A. Gas making purposes, in public gas producers.

Q. Now about your shipments to the Youngstown district, including points as far north as Warren. Do you have any shipments up there? (1185)

[fol. 1093] A. I do not have records which would be divided into certain districts. We keep our tonnage practi-

cally divided into States and this tonnage that I speak of that went westward, approximately 250,000, went into the State of Ohio. Now, that would be all points in Ohio. I could not pick out any specific tonnage that would go to any one place.

Q. You cannot compare then in general terms the tonnage that goes to Cleveland, for example, with the tonnage that goes to Youngstown?

A. No, sir; I do not keep the records that way.

Q. Of course you are familiar with the proposal to establish the 77 cent ex-river rate to Youngstown, are you not?

A. Yes, sir.

Q. Your view as to that, I assume, would be the same as your view in relation to the proposed ex-river rate of $1.10 to Cleveland?

A. Yes, sir.

Q. You see no difference in the fundamentals of the situation?

A. No, sir, I do not.

Q. Mr. Seyms, your Exhibit 113: Of course you realize that these ex-Ohio River rates that you have shown here must bear the additional burden of towing charge from the River mines and a transfer charge at the transfer point?

A. Yes, sir.

[fol. 1094] (1185) Q. That is clear, is it not?

A. Yes, sir.

Q. You also know, do you not, that the present all-rail rates which you have shown include not only the line haul and delivery service, but they include assembly service at the mines.

A. Yes, sir.

Q. Some of your mines, I take it, are located on branch lines, are they not?

A. Yes, sir.

Q. How many of the mines concerning which you have testified?

A. Seven of our mines would be on branches.

Q. Have you observed the assembly service in connection with the handling of coal from your mines?

A. Yes, sir.

Q. In general, is this a correct statement: that it includes the bringing of empties into the assembly yards, the distribution of those empties from the yards to the mines in rela-

tively small numbers, the gathering of those up after they have been loaded and the movement into the assembly yard, the assembly or classification of the cars for road haul movement at that point?

A. Yes, sir.

Q. There is considerable transportation involved in all that word, is there not?

[fol. 1095] A. Yes, sir. (1187) We have over 2,000 cars of our own. Of course we know what it is to handle cars.

Q. You do not know of any similar service to that involved in these ex-river rates, do you?

Mr. Orcutt: I object, Mr. Examiner. The witness has not been shown he knows anything about that.

Mr. Martin: I will withdraw the question, Mr. Examiner. That is all.

By Mr. Orcutt:

Q. Mr. Seyms, you stated in reply to Mr. Martin that the change in the relationship of the rates from the southern high volatile fields in the lake cargo trade was of some disadvantage to you?

A. Yes, sir.

Q. If these proposed rates, which are not restricted on Lake cargo coal, result in an increase of the differential, the 35 cent differential now existing, so that a further reduction in the rates from the southern high volatile fields has to be made to maintain that differential, would that be of additional advantage to you?

A. It certainly would.

Mr. Orcutt: That is all.

By Mr. Martin:

Q. Does the General Coal Company ship Lake cargo coal?

A. The General Coal company?

Q. Yes.

[fol. 1096] (1188) A. Yes, sir.

Q. Where does it come from?

A. Practically all of it is coal coming from the Westmoreland Coal Company and from their Crozier and Pocahontas operations down south.

Q. That is, the General Coal Company's operations in the south?

A. Yes, sir.

Mr. Martin: That is all.

Mr. Fitzpatrick: Mr. Examiner, the protesting carriers would like to offer in this record an exhibit consisting of a title page, and 34 pages of printed matter, the title to which reads: "Before the Interstate Commerce Commission. Ex Parte 103. Statistical Exhibits filed on Behalf of the Carriers." It is the desire of the protestant carriers that only that part of the exhibit shall be considered and received as [fol. 1097] evidence in this proceeding which deals with statistical data (1189) embracing the eastern district territory. In other words, as to any matter shown in the exhibit which deals with the carriers in the United States as a whole or with the southern district or with the western district it shall not be regarded as being in this proceeding at all. Some of the pages of the exhibit consist wholly of matter that embraces territory which we are not concerned with here, but in order that the document might be complete in the manner in which it was offered in Ex Parte 103, it would be our desire to let the complete document remain in the record.

I have discussed this matter with Mr. Martin, counsel for respondent, and I understand he has no objection to the receipt of this statistical exhibit subject to the explanation I have made and with the further understanding that no evidence will be offered in respect of it. It is largely self-explanatory and I think the evidence is unnecessary.

Mr. Martin: That is true, Mr. Examiner, if it is understood all figures except those relating to the eastern district, including the Pocahontas region are not to be considered as evidence in this proceeding. I have no objection to the receipt of the exhibit then. As I understand it, Mr. Fitzpatrick has crossed out in lead pencil everything which does not relate solely to the eastern district, including the Pocahontas region; is that correct?

Mr. Fitzpatrick: That is correct. I tried to indicate by [fol. 1098] (1190) pencil marks that part of the exhibit that is not in this record but still some of the matter covered by those pencil marks are legible, but protestants will not refer to that part.

Examiner Curtis: Subject to the stipulation of counsel already of record, the exhibit will be received and marked protestants' Exhibit 114.

(Protestants' Exhibit 114, by counsel, received in evidence.)

Mr. Martin: Of course, I do not stipulate the correctness of these figures. I merely stated I would not object to the restricted offer. It is not a stipulation whereby we are bound necessarily by figures. It is merely a statement that we will not object to the restricted offer of the exhibit.

Examiner Curtis: Well, is there going to be any question about the use of these figures?

Mr. Martin: None I know of now, but I do not want to foreclose myself——

Examiner Curtis: Very well. I will change my ruling. The exhibit is received in evidence in absence of any objection on the part of Mr. Martin, counsel for the respondents.

Mr. Fitzpatrick: Before we proceed further, there is just one other point I have to make. The other day on cross-examination I asked Mr. Durham certain questions in reference to the (1191) position of the W. & L. E. in ex parte Docket 103 that went particularly to the point as to whether or not the W. & L. E. filed a statement of so-called concur-[fol. 1099] rence with the Commission, whereby the W. & L. E. held itself out as indicating that it sought to apply the 15 per cent increase to all freight rates without any exceptions whatever. Since then I have made some investigation, and I have before me a copy of the order of the Commission in ex parte 103, the order being dated June 19, 1931. I should like to read in part the pertinent sections of that order as it toughes the question which I directed to Mr. Durham, if I may:

"It is further ordered that any steam railroad carrier which desires to avail itself of the benefit of the petition filed by the petitioners in their respective capacity shall cause its written appearance to be entered with the Commission through its officers or attorney thereunto duly authorized or by a registered practitioner before the Commission."

I was advised this morning at the Secretary's office of the Commission that the W. & L. E. filed an appearance

in accordance with that order so that the W. & L. E. is seeking the benefits of the petition for increased rates as filed by the carriers as a whole. The particular order from which I read in part also has this section, which I should like to read:

"It is further ordered that within 15 days from this date the petitioners or the carriers for which they speak shall (1192) file with the Commission their statement whether (1) they are prepared if the authority sought in the application is granted, to initiating increases of all existing freight rates of the measure proposed in their [fol. 1100] application; (2) or, if not, what specific exceptions they propose to make and particularly whether they are prepared to make increases of the measures proposed in all existing rates on grain and grain products, cotton and other agricultural and horticultural products, including live stock, non-ferrous metals, iron and steel articles, petroleum and its products, lumber and automobiles, and in all existing class rates, and, if not, what exceptions as to these rates they propose to make."

The petitioning carriers answered the section of the Commission's order which I just read by an answer dated at New York City June 24, 1931, the answer being to the effect that the carriers sought to make no exception whatever, but they seek authority to make increases of 15 per cent to all products, except they wish to have authority to maintain and preserve existing differentials as they apply to coke, coal and certain other commodities. Now, it is my understanding that no supplemental answer in behalf of the W. & L. E. has been filed, so that with its appearance seeking the benefit of the petition as filed by the carriers as a whole, coupled with the answer that was filed by the carriers as a group, the W. & L. E. stands before this Commission as desiring authority (1193) to make an increase of 15 per cent in all freight rates as they stand today.

[fol. 1101] Mr. Martin: Without attempting to reply in detail to Mr. Fitzpatrick's statement, which is, I submit, largely argumentative, I merely want to call attention to a paragraph which he did not refer to in this answer of the petitioners to the order of the Commission of June 19, 1931, which reads as follows:

"(5) That the Commission be advised that experience has shown that where any change in the entire rate structure of the country is authorized and becomes effective and it has subsequently been found to be necessary to make changes and readjustments, in some instances reductions, to meet competition and other situations, such changes — were found necessary will be made as promptly as possible after the proposed increased rates, if approved by the Commission, become effective."

Examiner Curtis: With that qualification, is there any dispute about the situation which you have just described?

Mr. Fitzpatrick: I think not.

Mr. Martin: I did not quite get your remark——

Examiner Curtis: Is there any dispute about the situation as outlined by Mr. Fitzpatrick and supplemented by you?

Mr. Martin: I think Mr. Fitzpatrick's statement so far as it covered facts is correct. I think likewise my short statement was equally correct. Now I think the rest of the matter is argumentative and we can draw our respective conclusions on brief or in argument. (11094.

[fol. 1102] Mr. Fitzpatrick: I thought it was necessary to make that explanation because of the condition of the record following the examination of Mr. Dunham. That clears that point up.

Examiner Curtis: I think the Examiner made some comment then that this ex parte 103 would be decided before this case and we would then have the benefit of that for the consideration of the Commission; that is, whatever action is taken in this horizontal increase, if we grant it in whole or in part.

F. L. Foster was thereupon called as a witness for the protestants, and having been duly sworn, testified as follows:

[fol. 1103] Direct examination.

By Mr. Orcutt:

My name is F. L. Foster. I am superintendent of freight transportation, Pittsburgh & Lake Erie Railroad. I have

been in the employ of the Pittsburgh & Lake Erie Railroad 26 years. All of the greater portion of that time has been spent or occupied with transportation matters. I have occupied my present position (1195) one year.

I have made an investigation of the available facilities of the Pittsburgh & Lake Erie at the present time for the movement of coal traffic as compared with other periods or dates.

As of September 1, 1931, there was a total of 9,518 coal cars on the line. On the same date we had a surplus of 2,797 empty cars available for immediate distribution; that was coal cars and 1,421 in storage. We also had in storage 6,734 of the so-called mill gondolas, which type of equipment can be and to some extent is being used for coal loading. The number of coal cars stored; however, does not reflect a real situation with regard to falling off in coal traffic because the New York Central is storing a large number of our coal cars and because we are not getting anywhere near maximum service out of the cars which have not been placed in storage.

I am asked what was the situation on September 1, 1931, [fol. 1104] as to the ownership of freight and switching engines.

We had an ownership of 227 freight and switch engines, 55 of which were in white lead; however, the number of engines in white lead does not reflect the actual traffic conditions on (1196) the line because the engines in service are capable of handling a great deal more traffic than is now being handled.

During the month of August, 1931, the number of cars loaded and received loaded from connections amounted to 43 per cent of the number loaded and received loaded in August, 1923. We had 8 engines in white lead in August, 1923. The average carrying capacity of our coal car equipment has increased 6,146 pounds per car December 31, 1923, and based on cars loaded we would be able to handle more tonnage in a given number of cars in 1931 than we did in 1923. The total cars owned by the P. & L. E. on December 31, 1923, was 35,023. That is all cars (1197).

The number owned on August 1, 1931, was 33,117.

14,031 coal cars were owned on December 31, 1923, and 13,892 on August 1, 1931. In August, 1923, our engine rating was 75 cars; 6,000 actual gross tons. In August,

1931, it is 115 cars, 9,500 actual gross tons. I said that our cars loaded and loaded cars received from connections in August, 1931, was 43.02 per cent of August, 1923. The percentage which our cars loaded and loaded cars received from connections in August, 1931, bears to cars loaded [fol. 1105] and loaded cars received from connections in August, 1929, is 48.43 per cent (1198).

The percentage which our cars loaded and loaded cars received from connections in August, 1931, bears to cars loaded and loaded cars received from connections in August, 1930, is 62.11 per cent.

I am familiar in a general way with facilities of the P. & L. E. Railroad; that is, as to cars available, engines available, engine ratings, track facilities for the haulage of coal and other commodities.

The P. & L. E. can, at the present time, handle more coal tonnage than is being offered to it. Speaking of coal tonnage alone, I would say we can handle three or four hundred per cent more coal tonnage than we are having offered to us.

By Examiner Curtis:

These engine ratings are based on the physical characteristics of the entire P. & L. E. Railroad. That takes into consideration grades (1199) from Brownsville or Newell, Penna., to East Youngstown, Ohio. We have about a one per cent grade, as I recall offhand. That is about as bad as we have over the entire railroad. We have only two points on the railroad where we require pusher with a full tonnage train if it comes to a stop. It is a water level route.

By Mr. Orcutt:

That pusher is not necessary for any extended length of track—just a very short distance.

[fol. 1106] Cross-examination.

By Mr. Martin

I am asked to state how many cars suitable for coal loading were purchased by our company during the period from December, 1923, to August, 1931. I cannot do that. I can compare the ownership in 1923 with 1931. (1200) I have

already done that. I have already stated that the aggregate capacity of those cars increased 6,146 pounds per car during that period. That would indicate that during that period we must have been purchasing a considerable amount of cars of larger average capacity than the cars which we had in December, 1923, and replacing smaller open top cars or smaller cars retired during that 8 year period with larger equipment to a large extent.

The same thing is true of the locomotives. I have stated that the average rating of our locomotives increased during that period of from 75 cars or a total of 6,000 gross tons to 115 cars or a total of 9,500 gross tons. We were increasing the number of large sized locomotives materially during that period, and in addition to that we were adding boosters and stokers to some of our already existing owned locomotives.

This situation of the excess capacity of the Pittsburgh & Lake Erie Railroad is not a matter of the last year or two. [fol. 1107] (1201) I am familiar in just a general way with the testimony in Finance Docket No. 6,754 involving the proposal of Pittsburgh, Lisbon and Western Railroad Company to build a line or lines of railroad to connect Youngstown with the Ohio river, and just in a general way with I. & S. Docket 3282, involving proposed ex-river rates from Conway and Colona to Youngstown. I do not recall exactly that in those cases it was testified, either directly or by stipulation of parties admitted into the record, that not more than 40 to 50 per cent of our company's capacity is now utilized, speaking as of the year 1928, but just about that, I remember reading the case and I worked on it, but I do not recall the exact figures.

I would not agree with you that August, 1929, was approximately the peak month of business on our company's railroad. I cannot name any month in recent years, say since 1926, that has been higher than that. (1202) During this period, from 1923 down to the present time, there have been coal mines served by our railroad which have become exhausted. I cannot indicate how many such mines have become exhausted. I do not know the daily capacity of these mines. (1203) I can neither give you an idea as to the number of mines or as to the aggregate daily capacity of the mines that have become exhausted. That information is available. There are so many mines, so many of the smaller mines, I should say, today, that we are not absolutely sure

[fol. 1108] whether they are ever going to *ever* operate again or not. That is not true of the larger mines, of course, and while all that information is available I certainly would not like to quote figures without any preparation. I cannot do it.

My recollection is there has been two of the fairly larger mines that have discontinued operation in the past two years. These two mines I have in mind probably have not been replaced by (1204) the opening of larger mines, but to a large extent they have been replaced by increased production of some of our existing mines. The addition of coal washers and those sorts of facilities have increased probably to the same extent as these two larger mines decreased the potential production.

Redirect-examination.

By Mr. Orcutt:

There are absolutely a lot more mines on the Pittsburgh & Lake Erie Railroad which will be closed up and abandoned if they cannot sell the coal they mine.

The reason I selected the month of August in these years is that it was the last full month report I had. August, 1931, was the last complete report I had when I was asked to look into this subject. I knew that August, 1923, was a good [fol. 1109] month and I just took it upon myself to make a comparison between the same months of a lean year and a good year.

By Examiner Curtis:

Ordinarily the best coal month on our railroad is October. That is about the close of the navigation season on the Great Lakes (1205) and it is a time when a great deal of domestic coal is moving for household use.

By Mr. Martin:

August, 1929, was the best traffic month of any month from January 1, 1927, down to date. That is all traffic I am speaking of.

E. F. Saur was called as a witness on behalf of the protestants, and after being first duly sworn, testified as follows:

Direct-examination.

By Mr. Orcutt:

My name is E. F. Saur. I am special agent, traffic department, Pennsylvania Railroad. As special agent my duties generally are to make studies, prepare exhibits, and testify in the defense of attacks on freight rates before the Interstate Commerce Commission Examiners and State commissions. I have prepared cost studies and I have testified in many cases before the Interstate Commerce Commission and [fol. 1110] various State commissions. I have devoted approximately fifteen years to that work. For the last fifteen years my time has all been devoted to that class of work and for ten years prior to that fifteen years I was used part time. I should say probably 25 or 30 per cent of the time at intervals, but part time for ten years and 100 per cent of my time for fifteen years.

(1207) In 1906 I made a cost study before I had ever heard of a formula. I made it simply from my own knowledge of operating conditions. I had had 28 years of experience in the operating department in all of its branches, maintenance of way, maintenance of equipment, and transportation. In 1916 I was assigned to a general committee on the Panhandle Railroad together with a similar committee on the Big Four Railroad to apply the so-called Arkansas formula on the lines of those two railroads in Ohio and Indiana. The result of that study, and it took us two two months to get ready, three months to run the study, and nine months to put the figures together, was the basis for the scale of rates in C. F. A. territory. That was the outgrowth of I. & S. Docket 965.

As to whether that was the C. F. A. class scale case reported in 45 I. C. C. at 268, I do not know the citation. Mr. Disque was the examiner. The studies were started and these two roads were selected as the test roads for the whole territory with the idea of going before the State [fol. 1111] commissions in Ohio and Indiana first; but during the progress of the study it seemed the part of wisdom to go first to the Interstate Commerce Commission (1208), which was done. After the so-called Disque scale was promulgated, it then became necessary to go into Michigan and Illinois before the respective State commissions, having already secured the consent of the Ohio and Indiana

commissions to go along with this scale. It was necessary to go into the other States and a contemporary of mine on the Big Four and myself were delegated to draft a formula to determine the terminal cost of handling freight traffic. We prepared the preliminary draft and had the assistance of some four auditors in Michigan and some fourteen accounting and operating men in Illinois. We prepared the formula, but before the cases could be prepared the Railroad Administration announced the issuance of General Order 28 and the question immediately arose as to whether we were trying the old rates or the rates under General Order 28, so we never finished those two hearings. But I have an incomplete list, and I know it is incomplete, of some 856 stations on the different railroads where that formula has been applied since 1917.

A Mr. Culbertson was associated with me in the preparation of that formula, I representing the Big Four. That formula which I then prepared with the assistance or co-[fol. 1112] operation of Mr. Culbertson is what is known and referred to in the Commission's reports from time to time as the Culbertson-Saur formula.

I am asked to state what operating experience I have had prior to my activity with these various cost studies and investigations. I started in 1887 as a rodman on an engineering corps. I have occupied different positions in that department. I was yard clerk, clerk to the fire, stock and personal injury claim agent; then I occupied all of the different steps in the superintendent's office, including time-keeping, fuel premium record, distribution of vouchers and payrolls, settling claims. I was a *hard*-master, special agent of at that time a newly created department of safety. I was five and one-half years in charge of a freight claim department; yardmaster, freight agent and yardmaster, and a supervising agent, having charge of the agents and station forces. I was occupying that position in 1916 when I was drafted for permanent work of this character. I do not know whether you want to refer to the record, but I helped write five other formulas. By "other" I mean in addition to the Culbertson-Saur formula.

(1210) I have seen the cost study offered by the respondents in this case as indicated by their Exhibit 44 and also Exhibits 40 to 43, inclusive.

I have made computation from figures furnished by the

Wheeling & Lake Erie Railroad to the Interstate Commerce Commission to determine the average cost per ton per mile of all traffic on the Wheeling & Lake Erie. The aver-
[fol. 1113] age cost for 1930 per revenue net ton mile for all traffic was 7.8 mills. The cost per ton mile evolved from respondents' cost Exhibit No. 44 shown thereon is slightly over 4 mills per revenue net ton mile. That is almost 50 per cent less than their cost for all traffic.

I am asked whether that fact suggested anything to me or meant anything to me before I commenced an analysis of the cost study. It would seem to me that that was somewhat out of line, something the matter with the cost study. I have analyzed the cost study (1211) briefly after having had the opportunity to discuss the details with representatives of the Wheeling & Lake Erie Railroad and after having had access to their working sheets.

I am asked to state the result of that investigation. First, I want to say that I believe I fully appreciate the difficulty of studying something that don't exist. By that I mean some traffic that was never in existence, and therefore cannot actually be studied itself. But there are so many things that seem to me to be wrong about this study that I think a more nearly accurate estimate should have been obtained.

Exhibit No. 40, which shows such details in connection with the movement of ex-river coal from Mingo Junction to Cleveland, shows, as I understand it, in column 4 the average movement of certain trains, that is, the average gross ton handled in certain existing trains, and column 5 shows how this barge load of coal consisting of 90 cars, about 5,000 tons, might be expected to be handled in con-
[fol. 1114] nection with the existing trains and some additional use of a swing run and the addition of an extra puller. The exhibit projects the calculations over the seven districts and you have a result indicating the gross ton miles that might be expected to grow out of the proposed arrangement for handling this additional coal. Then they find that the total gross ton miles divided by the accumulated train miles indicates the average gross tons per train mile of 4,101 as shown in item 1 at the foot of the page. It is my understanding that in column 4—that is average tonnage now supposed to be handled in these existing trains—that this tonnage is composed of various classes of traffic. Adding up the operations as shown in columns 4 and 5 indi-

cates that in the proposed operation about one-half of the gross ton miles would be earned by the tonnage shown in column 4. Now, I could not go beyond the fact that the average for coal is shown to be 56½ net tons while the average for all freight traffic on the Wheeling last year was 39.10 tons per car. So that if the tonnage shown in column 4 included the average quantity of coal, the 39.10 tons would be applicable, but if there was no coal in that tonnage, then the average tons for traffic other than coal must of necessity be a great deal less than 39 tons and without about one-third of the tonnage being coal. Now, we have calculated that the average loading for other traffic would be somewhere around 30 tons.

[fol. 1115] In item 2 they take 4101 tons and assume it to be a solid train of coal at 77 gross tons per car, which produces 53 cars and (1213) the exhibit itself shows about half of that tonnage that would be carried in the trains that will carry this additional coal was of a general character; and applying the 39 tons to the column 4 and the 56½ to the tonnage shown in column 5 would indicate instead of 53 cars in this train there would be 61 cars. If you applied 30 tons to the tonnage shown in column 4 you would get 68 cars to the train. So that while apparently they tried to say that this train was the equivalent of a solid coal train, it was not anything of the kind, because whenever you increase the number of cars you increase the car mileage with a proportionate decrease in the net tons handled per train which on the basis of applying the average of 39 tons to column 4 and 56½ tons to the tonnage shown in column 5—I mean 56.5 tons.

On the basis of 56.5 the net tons in the train would be 2,851 instead of 3,000, and using 30 tons for the tonnage in column 4, it would be 2,750 tons instead of 3,000. Now, whenever you increase the number of cars in a train and reduce the net tonnage there can only be one (1214) conclusion, and that is you have increased the unit cost; so that I do not see how you can transmute this mixed train—column 5 is all coal—I do not know how much coal is in column 4 or whether there is any, but the trains in which they [fol. 1116] propose to handle this coal up to something like 5,000 tons per barge, which would mean up to a tonnage of something like a million and a half tons a year, it is my understanding they propose to handle this on these

trains as shown on this exhibit every day. That is not a solid train of coal. It don't have 53 cars in it. On the basis of the minimum calculation they have 61 cars and would have 2,851 tons. It might have 68 cars and 2750 tons.

Examiner Curtis: Your testimony seems to indicate a comparison of ducks and drakes; is that it—an unlike thing?

The Witness: Is is just simply wrong. It is an assumption. It is not the equivalent of this train that they set up. The only thing equivalent to it is the 4101 gross ton miles.

Now, in selecting the month in which to make a study of the present traffic being handled in these trains they picked the month of June, 1929, and 1930 and 1931. Apparently in their judgment that was a proper month in which to make this study, but if they had gone to the basis of the average operating conditions as reflected by the operating ratio by months, they would have used May in 1928, April in 1929 and March in 1930.

[fol. 1117] By Mr. Orcutt:

(1215) I am asked if in those three the operating ratio in June was not lower in each year than it was in any other month of those years. No, it is not the lowest of any month, but it is not below the average. For instance, in 1928 the average for the year was 66.98. The average for June was 64.04; the average for May is 67.20. That is nearer the average than June. Similarly in 1929 the average for the year was 58.87; for June it was 66.30, and for April was 68.36, which is approximately the average. In 1930 the average was 73.22; for June it was 64.96, and for March it was 73.19, right at the average.

By Examiner Curtis:

Q. Now, can I break in just a moment by asking a question?

A. Certainly.

Q. Here is a Wheeling & Lake Erie train about to move out of Mingo Junction going to Cleveland, and it moves out under what might be called a regular schedule every day. Some days it has a full tonnage, other days it is half full, other days it has not hardly any load at all. Now, you

open up some new traffic consisting of ex-river coal that is going to be handled in these very same trains to Cleveland to fill out. If there is too much traffic on a given day [fol. 1118] to handle both a full load and other kind of freight they (1216) might have to use another train. We will say they are going to handle a half or more of another trainload on the same day. They will have to run an extra?

A. Yes, sir or hold the freight over the next day. You might have to hold it several days.

Q. Now, in working out these practical things and getting away from all these formulas—the Commission has got a lot of them, Dr. Lorenz and this Commission has gotten out a lot of formulas, the carriers have, and all that, trying to divide traffic between traffic and grades and all kinds of expenses and so on. I am wondering whether you give any consideration to the operation that I have in mind and have just indicated, in your criticism of the use of the average cost figures based on all traffic of the Wheeling & Lake Erie in their Exhibit No. 46?

A. I certainly have. If you have the patience to listen to me I will show you in a good many ways.

Q. That is what I am interested in.

A. Where the calculation is wrong.

Q. That is what I am interested in.

A. Talking about formulas, back in about 1913 I was before the Illinois Commission in a case involving rates on [fol. 1119] coal from an inner zone into East St. Louis. I had three pages of figures; a couple other railroads had one, and one railroad had 14, all pretending to show costs. Now, all that (1217) gave the Commission was simply a confusion instead of a conclusion. If you are going to develop costs, if you turn it over to two or more railroads without any formula, each man is going to honestly make his study like he thinks it ought to be; so the fundamental purpose of any formula is in order that the results for different services on the same railroad or for two or more railroads may be really comparable.

Q. Now, it has been my experience and I recall that traffic people felt they could haul freight to fill out a train if they got 5 mills per ton per mile on it, that they could break even. That was a figure that nobody on earth could check. Of course, later on that was cleared up, during the period of the World War and subsequently. Then we had a lot

of people who tried to find out what it cost to move a train of some commodity. They could find out maybe with some degree of accuracy or with some approximation that was fairly dependable as to what it would cost to haul on the average a ton of all freight for a year or any given period selected, but when it got down to hauling a commodity, unless hauled in a solid trainload, where you could get at the cost and arbitrarily apportion an amount for track maintenance and other expenses that are common to hauling all [fol. 1120] kinds of traffic, including passenger, you get into the realm of speculation. Now, when this exhibit was introduced I stated then and I am stating now I think fair and dependable cost studies are of (1218) extreme importance in measuring whether or not this coal trade will yeild any compensation to the Wheeling & Lake Erie Railroad or, to put it another way, whether it will be so low as to cast a burden on other kinds of traffic it handles under a given level of rates applicable to all kinds of traffic. So I am interested in what you say, but I would like to get at that situation when you finish your criticism to see what you have to say as to whether it can be done, whether you can put in this additional tonnage of coal into regular trains and tell anything about what it is going to cost to handle this coal and, if so, what it will cost. Will you undertake to do that?

A. I have made so many cost studies, there appears to be nothing deep, dark or mysterious about a real cost study.

Q. Have you ever found any cost study yet that is absolutely correct in every respect, that was not just as full of all sorts of assumptions, arbitrary apportionments, and this and that, some based on engine miles, some on car miles and some on this theory and some on that, and when you got through with it your head was in a whirl? The reason I bring this up is personally I have had a great deal of accounting experience myself. I have had so much of it that as I announced before, I want the burden of testing these [fol. 1121] figures placed on the parties. I do not want to analyze them.

A. Well, I think the test of whether or not a formula is (1219) proper and reasonably accurate depends entirely on the dependability of the specifications of such formula.

Q. Well, it depends upon a lot of assumptions, does it not?

A. Well, I would not say so. I would respectfully direct your attention to decision in I. C. C. Docket 19,610. That is the Chicago Switching case.

Q. Now, do not get me wrong. I suppose this Commission will try to uphold so far as it can Dr. Lorenz's rules for apportioning operating expenses between passenger and freight, but that is as far as I understand Dr. Lorenz and the Commission went. They did not go into the matter to find out what it cost to handle any given commodity.

A. Well, any cost study ever since I had experience in applying this Arkansas formula, any cost study in reference to the cost of transportation seems to me to naturally divide itself into two factors. The first is the terminal cost and the second is the line haul cost. The reason for that separation grows out of this fact, that the definition of a terminal cost is that it is a cost that will exist regardless of the length of the haul.

[fol. 1122] Q. That is probably more readily ascertainable that the line haul cost?

A. Very much so, undoubtedly, because when you get into line haul studies you run into a lot of the things that you have mentioned, which are not present in terminal cost studies.

(1220) Q. Well, you run into questions of differences in grades and curves and difficulties involved in transportation, do you not?

A. Yes, sir, in the line haul, but in the terminal studies the question of the speed of the engine is not taken into account. In terminal studies the car is the unit. The speed of the engine is never involved and, as a rule, the yards are reasonably level. The question of grades don't arise and, to my mind, you can ascertain terminal costs, whether they are initial terminal, intermediate terminal or destination terminal costs, with a very reasonable degree of accuracy, but when you come to the line haul part of it you encounter a lot of difficulties. Most of my experience has been in the terminal cost studies.

Q. Now, here is the Wheeling & Lake Erie and they undertake to make a cost study by people who are familiar with all of the operating conditions on that railroad. You as a witness are probably very familiar with the Pennsylvania Railroad with which you have been laboring all these years and you undertake to criticize it. Now, do you know

anything about the operating conditions on the Wheeling & Lake Erie between Mingo Junction and these four desti- [fol. 1123] nation points?

A. Only as I have listened to the evidence that has been offered.

Q. Now, then, we get that part of it. I do not want to interrupt (1221) you any more. Go on in your regular order.

A. Well, the same ——

By Mr. Orcutt:

Q. You heard Mr. Durham's testimony, did you not?

A. Yes, sir. The criticisms that I have made as to Exhibit 40 apply in like manner to 41, 42, and 43. I do not believe it is necessary to burden the record with much more detail as to the other three exhibits since they are all prepared in the same manner and to my mind have the same infirmities. The movement to other destinations is largely over the district, at least between Mingo Junction and Brewster. Then there is a separation. Some of its goes to South Lorain over another district, and the Canton and Cleveland coal goes up over another district, and the Massillon coal is handled in sort of a swing run or round trip district with a switching crew, but generally speaking, I cannot see how you can take the average gross ton miles per train made up in all four cases of mixed tonnage and say that that is the equivalent of a solid train of coal.

Examiner Curtis: We will take a short recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

[fol. 1124] Examiner Curtis: Proceed.

The Witness: Now, as you said a little while ago the Commission prescribes the basis for dividing track maintenance (1222) between passenger and freight. For many years that division authorized by the Commission was on the train mile basis. Then for a number of years the Commission required the railroads to keep a record of what they called the engine ton miles, the weight of the engine multiplied by the length of the run as to passenger freight, but they never ordered the railroads to use that basis, al-

though they kept the figures. Then during Federal control they evolved this fuel issue basis as between passenger and freight for the division of track maintenance. Certainly fuel issues bring into account the weight and speed of the train which train mileage does not; so to that extent the fuel issues is a more fair basis for division than train miles, but I do not believe anybody can say that the fuel issues is an absolutely true basis for that division. However, it is the legal basis and the one that has to be used.

By Examiner Curtis:

Q. Well, that is because of the quality of coal used, we will say, and the different types of locomotive and all that sort of thing which brings in all sorts of uncertainties?

A. Yes, sir.

Q. Proceed.

[fol. 1125] A. My next criticism of the exhibit as a whole is this: Apparently in all of their calculations they have used the total expense for the whole railroad and the total units (1223) in arriving at the various unit costs. Now, as I understand it, here are two districts, the first one from Mingo to Brewster, which has one pusher. In the division from Brewster to Cleveland there is a pusher. Between Brewster and Dambrinus, and it is our understanding that very little, if any, pusher service, is necessary on the other two districts. Furthermore on these two districts the train and enginemen must be paid a constructive mileage. Taking the exhibit itself, it shows from Mingo to Brewster is 79½ miles and that means that every trip the train and engine crews must be paid 20½ constructive miles because the minimum is 100 miles' pay for any trip.

Examiner Curtis: That is a round trip?

A. No, sir; a single trip.

Q. A single trip of 79 miles?

A. Yes, sir; that is from Mingo to Brewster.

Q. They are paid for 100 miles?

A. They must be under the wage regulations and they are paid a constructive mileage. Trains other than those shown are operated out of the Pine Valley. It is 63.7 miles from Pine Valley to Brewster. There is some more constructive mileage. From Brewster to Cleveland is 74½ [fol. 1126] miles—25½ constructive miles, while from

Brewster to Zanesville there is only 12 constructive miles and from Brewster to Toledo there is no constructive miles.

By Mr. Orcutt:

(1224) Q. Now, does any of this traffic under the proposed rates move over the division from Brewster to Zanesville or the division from Brewster to Toledo?

A. None from Brewster to Zanesville and only to South Lorain part of the way to Toledo. So that it is certainly unfair to take the expenses for the railroad as a whole, the effect of which is to understate the actual cost for the movement over the districts Mingo to Brewster and Brewster to Cleveland, and to understate correspondingly the actual costs on the other two districts except for the movement from Brewster to South Lorain.

Take the first item, 22 to 220, track maintenance, on a basis of a thousand gross ton miles. That is the whole railroad. All of their units are based on the whole railroad. Now, if it is fair to use fuel issues as a basis for the division of track maintenance expenses as between passenger and freight, it seems it would naturally follow that fuel issues would be a fair basis for the division as between these districts and the trains that will haul this coal.

By Examiner Curtis:

Q. Even though it is hauled in the same mixed train? [fol. 1127] A. It is over the two districts. They have the two factors—that is, the pusher or helper service and constructive miles.

Examiner Curtis: Yes, but what I have in mind, would you (1225) start to move coal in mixed trains? You may have a carload of hay. It won't have more than a minimum lading of say 20,000 pounds against a carload of coal weighing 100,000 pounds. Maybe you will have a tank load of fuel oil, very heavy, in that train. Against that you may have a carload of general merchandise loaded full or a car of furniture or something else at entirely different rates, all moving in the same train, some of which is going to be set out from time to time in the run. Now, of course, you are going to use the same engine for each division of each operating division. That is to say, you may use the engine all the way through, but you would change crews

and all of that. You would change your train men, your operators, your crews. You are clouded, it seems to me, with a very difficult situation when you undertake to find out what it is going to cost to move coal in mixed trains with other carloads of freight. Now, I do not know whether it is developed here or not. It may be that in some instances there may be some way freight in a train that is to be set out here and there and handled by the crews over the station platform. I do not know whether that is so or not.

[fol. 1128] Mr. Martin: That has been eliminated from consideration, so that the study has no element of way freight or less than carload freight.

Examiner Curtis: I am inclined to think, without binding (1226) the Commission or myself after mature consideration, that if we can get some sort of cost figure within fair and reasonable limits, that is from a certain figure to a certain figure, that that will probably be the best thing you can get. What I mean to say, the cost is 40 to 45 cents per ton, or whatever it does cost, with an range of say 5 cents. We will never get it accurately. Do you think so?

The Witness: No, sir.

(Narrative resumed.)

I think the use of the factor of gross ton miles would take care of what you have in your mind. You take a train has got so many hundred gross ton miles in it. It don't make any difference to the engine whether it is pulling the weight of load or the weight of a car. If you go to using the factor of gross ton miles to divide the cost, you can set up the cost of that trip and you are going to get the average cost per gross ton mile, or per net ton mile, After you have the gross ton miles (1227) you can take the lading in the train and attach to the lading the proper weight of the car and arrive at the cost. That is, you can [fol. 1129] take the tare weight out, but my objection goes to the point of taking the average cost for the whole railroad. But, nevertheless, you haul that car, but you haul it over two districts that certainly must be more expensive than the other two.

Now, that criticism applies to groups A, B and C. It is using the operating expenses for the whole railroad and assuming if those are the operating expenses for two dis-

tricts, which admittedly must be more costly than the other two, by reason of the helper engines, two of them, and the constructive mileage that must be paid on every trip to both train enginemen. Now, it may be entirely all right to combine the freight operating expenses of 1919 and 1930—because of having one good and one lean year.

But what we are dealing with here is a rate for the future and it would be my best judgment that the nearer you can get the expenses up to the present time the better guide that is going to be for the future.

(1228) As to why I think that with the trend of things in general, I do not doubt but what the operating ratio for 1931 is going to be higher than 1930, and if they continue the trend is going downward.

Now, in item 5, Block B and item 6 of Block C they have combined three maintenance of equipment accounts with three transportation accounts, the maintenance of equip-
[fol. 1130] ment accounts being 308, 309 and 310, locomotive repairs, depreciation and retirements; the transportation accounts being lubricants, other supplies and engine house expenses. The effect of that combination is to preclude the application of the proper M. of E. overhead to the M. of E. Expenses (1229) and the proper transportation overhead to the proper transportation expenses and on those same blocks they make a calculation to show the cost for heavier locomotives, based, as I understood the evidence, exclusively on tractive power. It is some time since I came in contact with the wage schedules but I know that they increase with the weight of the engine and that might or might not coincide with the increase in the tractive effort. It seems to me that is tacking a good deal of responsibility upon the one factor of tractive effort alone.

I am asked if the condition of the track, the weight of the rail, the resistance to the heavier types of locomotives as compared to the lighter type, would have a bearing. It seems to me there are a whole lot of factors entering there and I question the propriety of tacking it on to the one thing, tractive effort alone. On the other hand, I am not able to tell how far out of hand these items are in this exhibit, neither individually or collectively. Nothing but a restatement of the exhibit would indicate the actual facts. I would not go about it in this same way at all.

[fol. 1131] By Mr. Martin:

I am asked if I have gone about it in any way. I have been busy so far trying to find out what is wrong with this exhibit. (1230) I have not restated the exhibit at all.

I have made lots of terminal cost studies. I have never had much to do with line-haul studies. I am suspicious of them. I am satisfied in my own mind you can develop the terminal cost studies both at those initial and final terminals as well as at the intermediate terminals. The station expense item D is the one instance where they did make a real study to show how the account should be divided as between l. c. l. and carload and I think they very properly put the carload traffic on the basis of loaded cars because generally there is just one car to a waybill.

Now, when you come to block E, switching and classification expenses, their yard expenses and yard track maintenance are all grouped together and divided on the basis of switch engine hours and the evidence showed that the way they arrived at those hours was to take the engine mileage and divide it by six which puts this calculation on the basis of gross engine hours and by gross engine hours I mean the total number of engine hours including the non-productive service. Take the meal hour. Under the agreement you have to pay for it and what time you are waiting for an engine in the morning or turning the engine in [fol. 1132] a few minutes earlier in the evening, cleaning a fire or taking coal and water, or any non-productive (1231) service and I will make this statement after making several hundred terminal cost studies: It is my own experience that non-productive service will run anywhere from 6 to 15 per cent and I would say a fair average would be 10 per cent. No credit is given for that non-productive service in this showing. If you do not subtract the non-productive hours from the gross engine hours and put your calculation on a right engine hour basis, who is going to pay for the non-productive service? That principle was admitted in the report of the Commission in the Southeastern Refrigeration case, that the fair way to figure engine hours was on the net engine hour basis. It seems to me that would appeal to anyone as being fair.

My criticism is directed to the use of the gross engine hours here in the statement under engine hour in arriving at (1232) that engine hour cost. They set up a cost here,

an average cost of $0.36 an engine hour arrived at on that basis. Again, that is taking all of the yard expenses and all of the engine hours. If you would even expand that $0.36 by saying that an average non-productive time around a yard was 10 per cent, the effect would be to increase that $0.36 to $10.29. I know to that extent the figure is too low.

Then they have taken this yard maintenance for all the yards and I have made enough engine hour cost studies [fol. 1133] to know that the most striking thing about engine hour costs is that there are never any two of them alike.

The operation does not necessarily assume a very large yard area at Cleveland which would be much greater than at some divisional terminal point en route or even at Mingo Junction. There are two factors there, the cost and the number of engine hours and I believe I know it is possible to build up a nearly accurate and correct engine hour cost. In this Chicago case where 15 railroads made cost studies from 1917 until 1927, for 10 years, this formula I speak of for the development of terminal costs (1233) says right on the title page that it is a formula for the apportionment of certain operating expense accounts. It never pretends to produce a 100 per cent result. There are only about 67 out of the 197 disbursement accounts about which specifications are written. We have always estimated that we would get from 85 to 90 per cent of the total cost.

In the Chicago study we had three Belt railroads and five industrial railroads, eight roads, which do nothing but switch carload traffic and we had an opporunity and took advantage of it to take their annual reports, which included all of their operating expenses and set alongside of it what would be produced by the application of this formula and we proved that we got 90.8 per cent of the total cost from those 8 railroads. Therefore, I know that you can take a terminal cost formula and build up an engine hour cost in each individual yard and that is what they did not do. [fol. 1134] I know there will be a variation, depending on the size of the yard, the number of engine hours, and a lot of things. They did not do that and they had an opportunity to do it, because back in the Brick case the Wheeling & Lake Erie Railroad applied this formula at Canton, Ohio. That was in the Brick case. Now they show an output here in cars per hour. It is my understanding that

at some of the places these are taken from current records. At Mingo particularly they estimated something like 4 hours and 40 minutes would be required for terminal (1234) services on these 90 cars of coal or 18 cars per hour. As I understood the evidence myself that service was supposed to begin when the Steel Company turned the cars over to the Wheeling. I am also informed that 4 hours and 40 minutes which they converted into 5 hours, was intended to include all of the services incident to the terminal service of handling these 90 cars, and, as I said, to start with, I realize the difficulty of studying something that don't exist. That 18 cars per hour look to me a good bit like about the average number of cars classified per hour without including anything for industrial service. I am not in position to say whether that five hours is wrong or not, but it just don't look right. They certainly erred in going to the gross engine hour basis. They were wrong in taking the average of all hours.

Now, as to this output per engine hour, that is also sus- [fol. 1135] ceptible of determination, except, of course, at Mingo Junction where they have not got the traffic, but that schedule of five hours evidently assumes no interruption to regular schedule, whether they use the Steel Company machine or whether they erect their own machine.

When you come to Block F, car repairs, depreciation and retirements, they use a double barreled standard, undertaking to split those three accounts on a 60-40 basis between the amount that should be charged on account of use of the (1235) car and the amount which would accrue whether the car was used at all. Certainly that 40-60 is an arbitrary and they refer to the finance docket so-and-so as authority for using that car-day basis for part of it and a per mile basis for another part. It is equally true in this I. C. C. Docket 19610 that our formula only goes to the single standard of the average cost per car per day and the fact that we got a 100 per cent decision in that case is evidence to my mind that the Commission must have thought equally as well of that single standard.

Again, the proper proportion of maintenance of equipment overhead and supervisory expense is ascertainable and should have been added to that cost instead of all of the overhead being lumped together in one group. The proportion of the maintenance of equipment overhead

chargeable on account of the actual charges to 314, 315 and 316, freight train car repairs, depreciation and retirements, is certainly easily ascertainable and should be added [fol. 1136] where it belongs.

Now, on page 3 of this exhibit 44 they separate the track maintenance in Block A between yard track and other tracks. That is in accordance with the I. C. C. instructions, but it is a fact that in many yards there is performed a service that is certainly properly chargeable to road haul. Take that Brewster Yard, essentially a classification yard, few if any industries at all, to my mind that service at (1236) Brewster is an intermediate terminal service and is susceptible of being ascertained with reasonable accuracy.

In Block C, Transportation, item 14. As I see it Account 406, Drawbridge Operation has been included with yard expenses. Again I do not understand that there are drawbridges on every one of these four districts. So the effect of spreading that is again to reduce the amount that is chargeable to districts that do have them or would handle this coal traffic.

By Mr. Orcutt:

My understanding is that that drawbridge is in the district between Brewster and Cleveland. It is at Cleveland. It is certainly not right to spread it over the whole railroad. They have charged part of the cost by spreading it over the whole railroad to that district from Brewster to Zanesville over which none of this coal traffic moves. That [fol. 1137] is not the only effect. The effect is to spread some of it down on the district between Mingo Junction and Brewster, and Brewster and Toledo, the three districts where it don't exist. There are a lot of questions that certainly are susceptible of (1237) a reasonably accurate division between line haul and terminal. I have in mind particularly 405 and 404, operation of interlocking plants and operation, the cost of maintaining street crossing flagmen, are certainly susceptible of easy division between the use made of them, for line haul and for terminal and that use basis is a fundamental, it seems to me, that ought to run throughout every formula.

Take the maintenance accounts for the interlocking plants. Now, apparently all of the eight joint facility ac-

counts are included in the general overhead. They are certainly susceptible of some real analysis to put them where they belong. My understanding is at least that every exhibit that shows reciprocal switching it shows the average reciprocal switching charge in Cleveland of something like 13.75 cents a ton. I can not see that a reciprocal switching charge has any place in the building up of a freight rate because if the idea of reciprocity worked out in all cases fifty-fifty, it would not make any difference whether the railroads charged each other anything for reciprocal switching or not. That switching in Cleveland corresponds to what would be called in Chicago a two-line [fol. 1138] haul. There is the Wheeling service and there is the service of the other railroad in Cleveland. Now, I do not want to try to compare Cleveland costs with Chicago, but what we did prove as an average two-line switching cost in Chicago was 3.66 cents per hundred pounds to defend a 3½ cent (1238) rate with a minimum of 60,000 pounds. There is too much difference between that two-line cost developed there and this showing here as to the Wheeling cost at Cleveland which again is not segregated as to Cleveland. It is the general average for the whole railroad. Certainly that reciprocal switching charge has no place to my mind in the building up of a freight rate. It ought to be the average cost to those railroads, if you are going to use costs on the Wheeling. You may say that is all the Wheeling pays, but I do not understand that a reciprocal charge has any place in the making of a freight rate. If I understand these exhibits correctly, up to about a million and a half tons a year they expect to handle in these trains shown in the exhibit. If they get above a million and a half tons a year they say they will handle it in solid trains and handle it cheaper. They would have to prove to me they could handle it cheaper for this reason: They have already got an unbalanced traffic westbound. They are going to add more westbound loaded traffic, which [fol. 1139] means a return of the empties and whether they run these empties in trains of 100 cars—if they did they certainly would have to get the light power back, the surplus light power; so if they were running solid coal trains they would have to get the empties back and with an unbalanced traffic westbound it simply means that the eastbound engines would fail mate ally and have to fail as

to handling other (1239) potential gross ton miles. The weight is not there eastbound and under those circumstances I can not be sure if they handled the surplus coal in solid coal trains that the effect would be to reduce the unit cost.

It has been explained to me and I have tried hard to comprehend it. I will have to confess that I cannot do it because item 4 on page 5 shows as a basis 100 empty coal cars per train and they convert that from Cleveland to Mingo into 82 train miles. They say that that 82 train miles furnishes the equivalent of what would be 154 route miles and I cannot see if you run that train 154 miles why you have not got 154 train miles. They say they do not want this business if they are going to lose money. Last year, according to their records, in Dr. Lorenze's office, they had a 2.76 return on their property investment. They show here 64.8 cents per ton as a cost. To that cost or whatever is the cost certainly there must be applied a fair operating ratio. If these cost figures are not what they [fol. 1140] ought to be and if I have not offered evidence in the last two hours of a number of things, that is the matter with this cost study, then the time has been wasted.

By Examiner Curtis:

I have finished my criticism. I am asked what sort (1240) of plan I would offer for arriving at the cost of hauling coal from Mingo Junction to Cleveland, assuming, of course, that the tracks for the switching service from the supposed lifting devices are all there, with that exhibit before me showing how they have broken up their railroad between Mingo Junction and Cleveland for the purpose of train crew operation.

In the first place they show 7 different blocks on these Exhibits 40 to 43, inclusive, but let us assume they won't be changed.

In the first place (1241) there has been no evidence so far as I know offered as to what would be the intermediate terminal costs at Warrenton, Pine Valley, Jewett, Gambrinus and Kent.

I think they are just as ascertainable as any terminal costs, and to my mind whenever they change the tonnage of the train it takes time to do that, whether the tonnage is

increased or decreased, and the amount of time required to make that change is certainly susceptible of determination. [fol. 1141] If we start out with 5100 tons of coal and if it was all coal, it would be 53 cars. It is 53, 51, 68 or somewhere between. Around 50 cars will not be close enough. If they handle it in these mixed trains and the tonnage in column 4 is the average for the railroad as a whole, they are going to have 61 cars, not 61 cars including 51 cars of coal and 10 cars of other freight.

(1242) As to the additional coal shown in column 5, one train would have 24 cars of this additional coal, another train would have 27 and another 39 from Mingo to Warrenton and from Warrenton to Pine Valley. At Pine Valley there would be a change and one of the trains would handle 45 cars of this additional coal.

The first thing we are going to start out with is we are going to have some switching in order to get this car handled from the point where it is unloaded into cars and barges and the cars have to be switched out and placed in a train, and the first thing I would try to do in making a study like this, I would try to take each terminal and I would build up the actual cost of running an engine an hour in that terminal. I would get all the terminal costs and I believe I know they are readily ascertainable and not take the average for the whole railroad and for all yards.

[fol. 1142] I am asked what I would do with respect to the road haul between terminals. The development of these terminal costs in a good (1243) many instances would develop how much of an amount should be left for road haul. Now, in the development of the road haul costs, it is certainly possible to take one train or two trains or three trains of this average tonnage that would be hauled and follow that over the districts over which they run.

We have got to supply some separate operating expenses. Certainly the fundamental principle is the separation between line haul and terminal, for the reason that terminal costs are those which would exist regardless of the length of the haul and line haul costs are those that depend entirely on the length of the haul.

Having found the cost of switching, I would follow one or two or three trains and I would tie onto those trains as far as possible the actual operating costs. In other words I

should try to make a train test. Without that I would be dealing in the general average for the whole railroad and certainly on this railroad the general average is not applicable to the district over which this coal is to be moved.

Q. Then it comes back to this, that about the only really practical and fairly accurate thing that can be determined [fol. 1143] in (1244) respect to cost of moving a given kind of traffic is to take a train load of it and make a train test of it?

A. Not a trainload of that traffic because in most cases you would not have a solid train and these exhibits show up to a million and a half tons a year they would not have a solid train of coal. It would be a mixed train.

(Narrative resumed.)

As to whether I agreed with you that the cost of handling different commodities on account of light and heavy lading and so forth, varies very largely, you cannot ascertain the weight of the lading of each commodity. You can ascertain the kind of car in which it is transported. You can ascertain the tare weight of that car. You can assign to that movement regardless of the kind of car in which it is moved the proper proportion of empty haul by classes of equipment; so that you can arrive for the line-haul cost after having properly calculated the terminal costs, you can arrive at the line-haul cost of that commodity.

You can find out what the lading is. For the car (1245) of feathers you can find out the weight of the car in which the movement is made and you can find out the proportion of empty haul assignable to that movement.

"Q. Here is what is bothering me. We take a good box [fol. 1144] car which is necessary to protect the lading of a carload of feathers. You take an equally good box car of exactly the same dimensions and put hay in it. You have got those two cars in the train. Then right behind it you have got a car of crushed stone for road-making purposes which loads very heavily, probably 60 tons to the car. It happens to be a gondola and the tare weight of it is only slightly higher than the box car and it is not in the same state of repair as the other box cars and so on through the whole train. But in this train here are several carloads of

coal, drop bottom and steel cars which weigh heavy, weighing from 90 to 115,000 pounds per car. You are trying to find out what it costs to haul the coal. How can you do it?

A. You go back to the basic fundamental that it don't make any difference to the engine whether it is hauling the weight of lading or the weight of car. In one of the cases you have cited you can find out what is the weight of the lading and what is the weight of the car and the loaded movement and what is the proper proportion of empty mileage assignable to that loaded haul. You can find that weight. You would go on a gross-ton mile basis. The engine hauls the gross (1246) ton whether it is——

Q. Granting you can find the cost, now, how are you able [fol. 1145] to relate that cost to the risk of carriage and what the rate ought to be on the different kinds of traffic in that train?

A. Well, only to the extent that cost enters into the making of the rate *is* cost figures worth anything to you.

Examiner Curtis: I think I have pursued my injuiry as far as I want to go. We will defer cross examination of this witness until tomorrow morning at 10 o'clock."

(An adjournment was taken until 10 o'clock A. M. of the following day, Wednesday, September 23, 1931.)

(Hearing was resumed pursuant to adjournment, at 10 o'clock A. M., September 23, 1931.) (1247)

Direct Examination (Continued).

The Witness: On Exhibit 40, the last column, No. 9, shows the accumulated gross ton miles by districts, and that indicates that the average gross ton miles per train mile on the first district, Mingo to Warrenton, runs 2,785; from Warrenton to Pine Valley, 2,970; from Pine Valley to Jewett, 2,547; from Jewett to Brewster, 5,968; from Brewster to Gambrinus, 4,725; from Gambrinus to Canton, 4,229; from Canton to Cleveland, 4,013. The conclusion that I would naturally draw from that showing is that at least in the earlier blocks there must be some pretty hilly country (1248) down there. The heaviest movement is shown [fol. 1146] between Jewett and Brewster, 5,968, as contrasted with a little over half of that for the first three

blocks. That would seem to indicate that the movement of this coal must be relatively costly.

Another thing: in looking over the report of the operations for the year 1930, I noticed that but 48.5 per cent of the engine mileage is recorded as shofting mileage. They pay a little more money to yard conductors and brakemen than they do to train enginemen. That indicates that somewhere around half of their expenses are terminal expenses, so that either this showing of terminal costs, so far as they go with it on Exhibit 44, is entirely too low, or there must be some tremendous terminal costs elsewhere on the railroad.

Some years ago in I. & S. 65 we developed the fact that on the Panhandle Railroad the total terminal expenses were something like 24 per cent. The last annual report for the Pennsylvania Railroad that I looked at indicated an average haul of 193 miles, while this railroad has an average haul of 92 miles.

With an average haul of 92 miles and somewhere near fifty per cent of the cost being terminal, these terminal costs must of necessity be spread very thick, much thicker than if the haul was longer. Because the terminal costs do not depend on distance.

I would like to say as to this engine hour cost that I have (1249) been making cost studies for fifteen years, and I [fol. 1147] would say that I never yet have developed an engine hour cost in that time of less than $12.50. In the Chicago Switching case, where fifteen railroads built up twenty-two engine hour costs, the average of the twenty-two was $14.96.

As I see this Exhibit 44, except to the extent where actual studies were made, according to my comprehension of the term cost study, this is not a cost study. It is a statistical analysis on this railroad of handling all traffic.

My conception of a cost study is where you go and actually make a study of the cost of the service furnished to the commodity under review.

(Narrative resumed.)

We were told that these costs were the average costs for the whole railroad.

By Mr. Martin:

The W. & L. E. auditor told me that. I mean the money. The total money and total units for the whole railroad. As to whether I am talking about unit costs and not the cost shown in the last figure to the right in the first and second pages of the Exhibit, (1250) that is where you take the total money, as shown in Column 1. In Column 2 you show the kind of units. Then you get the cost per unit, and certainly that is your average cost for the whole rail-
[fol. 1148] road. If you get the total unit and the total cost on the whole railroad, the cost per unit must be the average for the railroad.

By Mr. Fitzpatrick:

Q. Mr. Saur, in referring to page 5 of Exhibit 44, you made some criticism of the computation shown in Item 4 by Mr. Durham, where he figured that 53 cars times 154 miles was the equivalent of 100 cars for 82 miles. I believe you stated you could not understand how that computation was made. Isn't it so that a like computation was employed by Mr. Durham in connection with Item 6 and also Item 8, on page 5?

A. Yes, sir.

(1251) Q. If the cost for the return movement of the empty cars was based on an assumed movement of 100 cars, isn't it obvious that those costs would not be correctly portrayed if, in fact, 100 cars moved in two trains?

A. I believe I understand how they made this calculation, but I do not think it is fair. I don't think it is right.

Q. Let us take this particular item; where the locomotive miles in connection with the movement of the empty cars was computed in some manner which is not clear to me, and which I understand you do not believe to be fair. Isn't it clear that if two locomotives were used in carrying
[fol. 1149] fifty cars each from Cleveland to Brewster, that a study which assumed that 100 cars would be moved on one engine—one locomotive—would not portray the actual cost?

A. Not only that, but whenever you get to the point where you are really going to move your 100 empty cars, if you had an already unbalanced westbound traffic, you must of necessity accumulate a surplus number of engines at Cleve-

land. Now, to the extent that the eastbound engine does not move its potential gross ton miles—and it can't, with one train handling 100 empty cars and another engine running light—or if you split the 100 cars between the two trains you wouldn't anywhere near equal the potential gross ton mileage of the engine, so that you must increase the unit cost, which it is proper to add to the loaded movement.

(1252) Q. But in connection with a tow of 5,150 tons, which was employed in Mr. Durham's calculations, if only fifty cars from that tow moved to Cleveland, and if the W. & L. E. were bent on making a cost study which would assume that 100 empty cars would move from Cleveland, isn't it apparent that they must store their empties until they had accumulated 100 empties, or else they must move fifty cars in one train and the additional fifty cars from another barge in another train?

A. Not only that, but their computation is based on 42 cars going to Cleveland. In the set-up as they have figured [fol. 1850] it, from Mingo to Warrenton, one train would have 24 cars of coal; the next train would have 27 cars, and the next 39. That same assignment runs through the next block, Warrenton to Pine Valley. But when you get to Pine Valley, you put 45 cars in one train, 20 cars in another and 25 cars in another. When you get to Jewett you put 51 cars in one train and 39 in the other. Brewster to Gambrinus, when you get to Brewster you have set off your South Lorain coal and your Massillon coal. So that from Brewster to Gambrinus you only have the 41 Cleveland cars and the 4 Canton cars, or 19 cars in one train and 26 cars in the other. At Gambrinus you set off the four cars for Canton, and from Gambrinus to Cleveland you have only 26 in one and 15 in the other, or only 41 cars, so that on any one day on this estimated one tow you would only have 41 cars coming into Cleveland. So that if you waited on 100 cars out of Cleveland, you would wait three (1253) days.

By Mr. Martin:

I am asked who besides Mr. Fitzpatrick ever said they would draw 100 cars out of Cleveland. Your page 5, where you are trying to show at least the equivalent cost.

By Mr. Orcutt:

From my experience with cost studies, and my analysis of this study, I am not able to give you any approximate [fol. 1151] final cost figure that should have been obtained by this cost study had the computation been made somewhere near correctly.

I have no access to the Wheeling & Lake Erie records, and if I was going to restate this study, I certainly would not restate it in this manner. I have no way of knowing what effect the different criticisms would have on the honest-to-goodness cost of transporting this coal.

I do not know what effect, in cents or in mills.

I am asked if I know whether it would increase or decrease it. Everything I have said would have a tendency to increase the unit cost.

By Examiner Curtis:

(1254) I cannot even mentally estimate or approximate or give any idea at all about how much these cost figures are too low from this exhibit itself, but several years ago I undertook to do largely this same thing on a movement that involved an average haul of about either 16 or 18 miles, with no helper service, with no constructive mileage, and the coal being handled in practically solid trains. I don't remember whether it was 16 or 18 miles, but it was in that neighborhood. And by working out the actual terminal costs and by taking the road haul costs—and I had an advantage in that case in that the bulk of the movement was handled by district switching crews—for that distance I first got the actual terminal costs—I say actual, but they were as nearly actual as could be ascertained with our [fol. 1152] formula. Then as to the road haul costs, certain road haul costs are easy of allocation. Take locomotive repairs, depreciation, retirements, wages of trainmen, enginemen, fuel, water, lubricants, other supplies, engine house expenses and train supplies. Many years ago we used to call those eleven accounts the Locomotive Performance Sheet accounts. They are certainly easy of ascertainment. There is a lot of line haul costs over and above that where the method of proper allocation may be very debatable. But what I got in that case for this haul was

about 65 cents. Here I am confronted with an exhibit for a 154 mile haul which shows but 65 cents, so that the conclusion I would draw would not be from trying in my own mind to (1255) restate this exhibit. Nobody could do that but the Wheeling.

That is a fact, that I obtained the result mentioned.

By Examiner Curtis:

Q. Take that study you made there, and couple that with your general experience, and then consider the distance of this haul, as shown in the exhibit, to Cleveland. Is it possible to express any opinion at all?

A. All I could express, and I would want it clearly so understood, would be only an estimate. Based on 25 years of experience in making cost studies, principally terminal cost studies, it seems to me that the lowest possible figure [fol. 1153] that they could arrive at here would be not less than 80 cents a ton, instead of 65.

Q. That is 80 cents at Cleveland?

A. Yes.

(Narrative resumed.)

I am asked if I have any opinion as to the cost of moving coal to the other three points. Item 3, page 5 shows it is 154 miles to Cleveland, and 154 miles to South Lorain. Those are the two points which their estimate indicates to take 41 cars each, with the route mileage relatively the same. They do pay some constructive mileage to train and enginemen between Brewster and Cleveland, where they do not pay any constructive mileage in the movement of a train between Brewster and Toledo. But I couldn't say (1256) that there would be much difference between those two movements.

That 80 cent figure would be intended to include the same total operating expenses that that 64.8 cent figure includes. No allowance for taxes. Taxes is not generally considered to be an operating expense.

To take care of taxes, interest on bonds and all fixed charges you would have to apply some kind of fair operating revenue.

When I spoke of cost, I meant only the 197 disbursement accounts.

[fol. 1154] "Q. The problem I seem to have in mind just at the moment is the question as to whether these rates will yield something in the way of a return on the fair value of the property. Or, put in another way, whether or not the proposed rates are so (1257) low as to cast some burden upon the ability of the Wheeling & Lake Erie Railroad Company to earn a reasonable rate of return on the fair value of its property devoted to transportation. By that I do not mean, of course, and cannot be understood to mean, that a single railroad can be expected in every case to earn any prescribed return on the value of the property of the carriers, taking the country as a whole, or by districts, as fixed by the Commission.

A. But if on top of whatever the operating cost is you do not apply an operating ratio you are making through traffic bear an undue proportion of the fixed charges. Another thing: this reciprocal switching is not an operating expense. It is a deduction from income."

(Narrative resumed.)

By Mr. Orcutt:

I have not included the reciprocal switching anywhere in my figures. Now if the cost of that service to both the Wheeling and the other delivering lines in Cleveland, was figured after the application of the operating ratio to the [fol. 1155] estimated figure of 80 cents, you are going to get a figure somewhere around what the commission has decided to be the proper rate for that rail movement, and the difference there, as I see it, from an operating standpoint, is the difference between the average assembling cost of assembling coal from mines located on the (1258) railroad, and these initial terminal costs at Mingo Junction, which certainly would be less than going around and assembling coal from a group of mines. At least a few cents less per ton. They claim their assembling cost is about ten cents per ton, and show here something like one cent a ton for this initial cost at Mingo Junction.

And I don't believe their terminal cost is anywhere near what it should be. But there is a difference there, and the only difference I can see in this movement from a movement from mines located on a railroad is that difference between the initial terminal cost at Mingo Junction

and the average assembling cost from mines located on the railroad.

Coming back to this question of reciprocal switching, the rates to be charged by carriers in the same terminal district, switching for each other on a reciprocal basis, are largely made with consideration to all of them having the same or nearly the same amount of switching to perform for each other, either at that point or other connections [fol. 1156] on the railroad.

And if the reciprocal switching was always on a 50-50 basis, (1259) it wouldn't make any difference if they didn't charge anything. That is merely an internal matter. But when you come to including a reciprocal switching charge in making up a freight rate, I can't see that at all. It seems to me that you are at least entitled to the cost on the connecting line.

It is my view that the rate ou--t to include the full cost of service and something above that to take care of taxes, joint facility rents, hire of equipment and some profit.

(1260) Q. Taking that mental estimate of 80 cents, which you have estimated as perhaps the operating cost, and treating that with an operating revenue which you would consider as fair, will you tell us what the result would be, and also tell us why you think the operating ratio you have used would be a fair one?

A. As to operating ratio, in order to earn the same rate of return each railroad of necessity would have to have a different operating ratio. In I. & S. 965, without saying so in as many words, the practical result was that an operating ratio of 66⅔ per cent was considered to be a fair operating ratio.

By Examiner Curtis:

Q. That was largely theoretical too, wasn't it?

[fol. 1157] A. I don't think so. At that time many roads had an operating ratio of even less than 66⅔ per cent. In the Chicago Switching case we undertook to take the dollar of revenue earned by all Class 1 railroads of the United States and separate it so as to see what was left after accounting for the different items of expense, and the ratio we used there was, as I recall it, 68.4 per cent. I have recently had occasion to be called on, as you well know, to figure

what operating ration should be applied in a case that involved a law suit, so I went to the Comptroller of the Pennsylvania Railroad and asked him what operating ratio that would require in order to earn 5.75 per cent, and he gave me a figure, as I recall it, of sixty-seven and a few points over. I think in I. & S. 965 the (1261) examiner had in mind the ratio for a group of railroads, and I think that is the only fair way to look at the application of an operating ratio. You certainly could not use the actual operating ratio of a railroad, because if that operating ratio should come to 100, you wouldn't say for a minute that was a fair operating ratio. So if you go to the ratio actually earned by the railroad you just chase yourself around in a circle, because that ratio is what produced the result.

Q. That ratio is dependent upon fluctuations of revenue [fol. 1158] earnings. In other words, the ratio would go up and down depending on increase or decrease in revenue earnings. Take a lean year. Unless you scrimp your maintenance your operating ratio would undoubtedly go up. If you had an enormous tonnage, abnormally enormous tonnage, relatively speaking, and your road was in prime condition from the standpoint of maintenance, your operating ratio would go down, because, after all, operating ratio is nothing in the world but dividing revenue into expenses and getting a percentage figure. Isn't that so?

A. That is exactly right, but I wanted to make the point in response to the question that a fair operating ratio is something that is very difficult to develop. There are so many things that would enter into what constitutes fairness. But I have in all terminal cost studies made a practice of using an operating ratio of 66.67 per cent, and in many instances I have, I believe, shown that for terminal operations alone that ratio is (1262) entirely too high, because of greater investment per mile of road within the terminal limits compared to the investment per mile of road outside the terminal limits. But, applying the 66⅔ per cent ratio to the 80 cents, the mathematical result would be $1.20, and if you added anything like a reasonable cost for the delivery in Cleveland, you are going to get close to the rates prescribed by the Commission for the delivery of coal, [fol. 1159] after what I understand to be a very exhaustive investigation. I think in the brick case, out of six terminal cost studies we got an average of something like 25 cents

per ton. All in big cities. I notice the Erie Railroad has a reciprocal switching rate of 32 cents per ton. It looks like they must have made some studies to see what their cost is. That contrasts with this average reciprocal charge of 13.75 cents per ton.

(Narrative resumed.)

By Mr. Orcutt:

The application of an operating ratio of 66.67 to 80 cents would produce $1.20, and if you added anything like 25 cents per ton, instead of 13.75 cents, you are going to reach a figure of something like $1.45.

By Examiner Curtis:

This is in excess of this $1.10 rate.

By Mr. Orcutt:

(1263) At a switching rate of 25 cents per ton that would be one and a quarter cents per 100 pounds.

One and a quarter cents is from the studies I have made over the past twenty-five years, a very low switching rate in a terminal district like Cleveland. On a one line haul in Chicago we got 2.97 for 100 pounds, protected with a 67,000 pound minimum, and on a two line haul such as this, we got [fol. 1160] 3.66, protected with the same 67,000 pound minimum. As a matter of fact, and to be entirely accurate, that switching cost should be added to the operating cost before the operating ratio is applied. I was looking at it from the angle of this reciprocal charge not being an operating expense. So that if the extremely low switching cost I have assumed of one and a quarter cents in Cleveland were added to the 80 cents cost for the operation from Mingo to Cleveland, I would have a cost of $1.05 to which to apply my operating ratio. They have proposed a rate of $1.10 in this proceeding, and their cost is (1264) 64.8.

I am asked if assuming the cost they have shown to be correct, and in the computation using the rate they have proposed, of $1.10 what operating ratio have they themselves provided for in that proposal.

If I understand it right, the first thing you would have to do with their $1.10 figure would be to take off the 13.75 in order to figure the operating ratio applicable to this 64.8

cents figure. That would bring you down to about 96 cents.

By Examiner Curtis:

"Q. Haven't you overlooked the fact, Mr. Saur, that they have some element of this switching charge in their cost figure already?

A. Only the Wheeling part of it.

Q. They have put it in as far as it goes toward the part of the reciprocal switching charge they are required [fol. 1161] to absorb.

A. No. In Item E, Switching and Classification expenses, they show that the kind of unit used was the engine hour cost—this same 9.36—and for their own service at Cleveland they have used an output of 7.3 cars per hour, which is for their own service only. The reciprocal switching is shown in another exhibit. It doesn't appear in this Exhibit 44. That would make an operating ratio of somewhere around 67 or 68."

(Narrative resumed.)

By Mr. Orcutt:

The switching cost to Cleveland should be included before I apply the operating ratio, (1265) and used in place of this reciprocal switching charge, although that may represent what the Wheeling pays to get that service done.

By Mr. Fitzpatrick:

In the course of my direct examination I stated that the operating ratio of the Wheeling & Lake Erie during 1930, based on their reports to the Commission was 73.22; in 1929, 68.87; and in 1928, 66.98 per cent.

[fol. 1162] I am asked what operating ratio the factor of cost for carrying this coal as stated by the Wheeling, 64.8 to Cleveland, would produce. I have not computed that figure.

J. T. Carbine was thereupon called as a witness for and in behalf of the protestants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

My name is J. T. Carbine.

My position is Assistant General Traffic Manager, Pennsylvania Railroad, at Philadelphia. My present position I have occupied since 1927. I have been (1270) in the Coal Traffic Department for 22 years.

In my present position I have entire charge of the coal, coke and iron ore traffic of the Pennsylvania system as a whole, and I report direct to the Vice President in charge of traffic.

I was a member of the committee appointed by the executives to prepare the defense in this case and as a member of that committee I was delegated to testify in behalf of all protestant carriers. The testimony I shall give here is in behalf of all protestants and not the Pennsylvania alone.

[fol. 1163] I have a map of the Wheeling & Lake Erie Railway and the Lorain & West Virginia Railway, taken from the 1930 annual report of that line.

(Mr. Orcutt: The protestants offer that map as their (1271) Exhibit No. 115. Protestants' Exhibit 115 received in evidence.)

This map, Exhibit 115, is, as stated, a map of the Wheeling & Lake Erie, and Lorain & West Virginia Railway, taken from the 1930 annual report of that line. It shows by shading the coal areas adjacent or available to the Wheeling & Lake Erie Railway. The smaller map set forth at the lower left hand corner of the exhibit shows the available coal area within the Ohio No. 8 district on the W. & L. E. Railway, the existing mining operations and their daily capacities. It is to be observed that the line of the Wheeling & Lake Erie Railway from Steubenville south to Martins Ferry, at which place river coal to be moved under the suspended rates will be loaded into cars, skirts the Ohio No. 8 coal district, and in most instances actually reaches coal bearing land. For some reason or other, however, the map does not indicate coal bearing land, or the existence of coal bearing land, adjacent to the station Terminal Junction, Ohio, where three coal mines are situated, according to the records of the W. & L. E. Railway. Terminal Junction is between [fol. 1164] Wheeling and Warrenton, shown in large type in

this lower left (1272) hand section of the map. The names of these three mines are Shadyside Mine, Ohio & West Virginia Mine, and Philadelphia & Cleveland Coal Company Mines. It would therefore appear that the shaded portion of the map, indicating the coal areas should be extended southwardly along the River Division of the W. & L. E. at least as far as the station River Division.

I have prepared a statement showing the names and location of active mines on the Wheeling & Lake Erie, and their distances to Cleveland, Lorain, South Lorain, Canton and Massillon, Ohio?

(Mr. Orcutt offers that as Exhibit 116.)

(Mr. Martin objects until it is shown that the witness has personal knowledge of the data shown on the proposed exhibit and the witness is asked if he has personal knowledge of this, or if it is not from personal knowledge what source he has used to compile the exhibit.)

The Witness: (1273) The information was furnished by the Wheeling & Lake Erie for use in the Lake Cargo Coal Rate case to the Central Freight Association Coal, Coke & Iron Ore Committee, which committee is handling this case for the protestants. That information is available to me and my representatives, or our representatives, on that com-[fol. 1165] mittee. The information, I think, is all shown in the book that you offered through Mr. Kern. That is, as to the active mines on the Wheeling & Lake Erie. It is a matter of record. It is information furnished by your own company.

(*After further objection by Mr. Martin there ensued discussion off the record, at the conclusion of which the following occurred.*)

Mr. Orcutt: I offer this exhibit as showing a list of the active mines on the Wheeling & Lake Erie between January 1, 1929 and April 1, 1930, as reported by the Wheeling & Lake Erie Railroad to the Central Freight Association Coal, Coke & Iron Ore Committee.

Mr. Martin: I will object to the exhibit, because it is not a fact within this witness' knowledge, and the fact has been disclosed here that it is absolutely incorrect as of the present time. It represents a situation, or partially represents a situation existing a year and a half ago, and there (1275) has been such a radical change in the number of mines as to

render this exhibit, which is not based upon the personal knowledge of the witness prejudicial to the respondents and therefore objectionable.

Examiner Curtis: Are you willing to put in a statement showing the situation as of today in regard to name and [fol. 1166] location of the active mines and respective mileages therefrom to Cleveland, Lorain, Canton and Massillon, in lieu of this exhibit if I sustain your objection?

Mr. Martin: Perfectly willing. I have it here and will make an exhibit of it.

Examiner Curtis: The objection is sustained under the best evidence rule, with the understanding that you will supply up to date information in accordance with the form of exhibit here offered by the protestants.

Mr. Orcutt: Mr. Examiner, I want to call your attention to the fact that the offering of that exhibit by Mr. Martin will not supplant this exhibit. Mr. Martin's objection to this exhibit is that it does not portray the conditions as they exist today. The exhibit was not offered to portray any such situation.

Examiner Curtis: On that ground the examiner has made no ruling.

Mr. Orcutt: I understood you had sustained the objection.

Examiner Curtis: I sustained the objection under the best evidence rule, and that is that this witness is offering (1276) information which he obtained from a second-hand source compiled a year or more ago, not up to date, and it is not the best evidence in the light of the offer of Mr. Martin to put in the record a similar exhibit showing first hand informa- [fol. 1167] tion from his own people who ought to know, in lieu thereof.

Mr. Orcutt: Well, Mr. Examiner, I will make it the best evidence, by offering to produce before this hearing closes the letter of transmit-al from the Wheeling & Lake Erie Railroad to the Central Coal, Coke & Iron Ore Committee, transmitting this list in 1930. That is a self-serving declaration and it is the best evidece. That takes care of your best evidence rule.

Examiner Curtis: If you do that, you will have to amend the heading of this exhibit.

(After further discussion the following occurred:) (1280)

Examiner Curtis: Well, let us produce the letter of transmittal and see what that says and what date it is and so on, and who furnished it and under what circumstances. Have you the letter?

(Objection that this is hearsay evidence the way it is shown.)

(After further discussion Examiner Curtis ruled as follows:)

(1282) Examiner Curtis: The exhibit, then, will be received for identification, to be later supported by the letter of transmittal to be produced by Mr. Orcutt.

(The document was thereupon marked "Protestant's Exhibit No. 116 for Identification, Witness Carbine.")

Examiner Curtis: The record will indicate that Mr. Mar-
[fol. 1168] tin may supplement this exhibit and bring it down to date if he so desires.

(1283) (Narrative resumed.)

By Mr. Orcutt:

I have prepared a statement of the present rates, from the proposed Wheeling & Lake Erie ex-river originating points and the proposed rates compared with rates on the Holmes & Hallowell Scale, 85 per cent of the Holmes & Hallowell scale, 82 per cent of the Holmes & Hallowell scale, and the 77 cent rate projected under the Holmes & Hallowell rate of progression, and the Slider scale.

(Mr. Orcutt offers that as Protestants' Exhibit No. 117.)

(The document was thereupon received in evidence, marked Protestants' Exhibit 117, Witness Carbine.)

By Mr. Orcutt:

The present rates as shown on this exhibit in the column headed 1 are those now published in Agent Davis' Ohio Coal Tariff, I. C. C. 48, from the Ohio No. 8 district, which may be applied on ex-river coal from W. & L. E. proposed ex-river originating points, because all of such stations are shown in the (1284) cited tariff as origins within the Ohio No. 8 district, and the tariff contains no restrictions whatsoever which would prevent their application on ex-river coal.

We likewise show in the following column the proposed [fol. 1169] ex-river rates under suspension. In column headed 2 are rates on the Holmes & Hallowell scale for the average distances from the Ohio River points to Canton, Massillon, Cleveland and Lorain. It will be observed that by applying the Holmes & Hallowell scale for the distances involved the rate to Canton and Massillon would be $1.36 per net ton and to Cleveland and Lorain $1.82 per net ton. In the column headed by the numeral 3 are rates based on 85 per cent of the Holmes & Hallowell scale.

[fol. 1170] I heard Mr. Adell's testimony and I heard his cross examination. I heard him admit that if the actual origin points, that is, Mingo Junction and Martins Ferry had been taken instead of all the points on the River Division from which the respondents sought to publish the ex-river rates that it would have increased each of the average mileages shown in the first column of figures on the left hand side of my exhibit, so that the rate would be in the next highest mileage block under any mileage scale breaking at 80, 90 or 150 miles, (1285) and if that were done, of course the rates in my column No. 2 would be increased to the rate for the next mileage block.

The rates determined by applying 85 per cent of the Holmes & Hallowell scale are on the same basis as used by the Commission on ex-river coal from Cincinnati, Hamilton and Middletown, Ohio, in 173 I. C. C. 357, and would produce rates to Canton and Massillon from W. & L. E. Ohio River points involved of $1.16 and to Cleveland and Lorain of $1.55.

The column headed No. 4 represents 82 per cent of the Holmes & Hallowell scale, which represents the percentage of lake cargo coal rate of $1.43 from the Ohio No. 8 district bears to the Holmes & Hallowell scale. On this basis the rates to Canton and Massillon would be $1.12 per net ton, and to Cleveland and Lorain $1.49 per net ton.

Column 5 shows rates which would result from projecting the (1286) 77 cent rate suggested by the Interstate Com- [fol. 1171] merce Commission in 163 I. C. C. 3, on ex-river coal from Conway and Colona to Youngstown, Ohio, in accordance with the Holmes & Hallowell scale rate of progression. By using this method the rates from W. & L. E. Ohio River points involved to Canton and Massillon would be $1.11 and to Cleveland and Lorain, $1.57.

Column No. 6 employes the Slider scale as a basis. This scale had been prescribed by the Interstate Commerce Commission in E. T. Slider vs. B. & O. Railroad, et al. 96 I. C. C. 65.

By Examiner Curtis:

Q. Now, let us get back to No. 4. No. 4 represents the lake cargo scale, does it not?

A. That was determined this way, Mr. Examiner——

Q. Well, in effect it amounts to that, doesn't it? You have undertaken to relate it to the Holmes & Hallowell scale, but the measure of the rates is just about that?

A. Yes, if you apply that to the $1.74 it will work out the same way.

Q. In other words, we could for all practical purposes consider column 4 as the lake cargo rate?

A. As related to the local rate. The local rate is $1.74.

Q. Well, get away from the relationship. These are, within a fraction of a cent, substantially what the lake cargo rates are?

Mr. Martin: No. There are not actual rates that he shows in column 4 at all.

By Examiner Curtis:

Q. Well, what are these rates? What is (1287) the lake cargo rate from these Ohio River points to these four destinations?

[fol. 1172] A. Of course, there is no lake cargo rate to Canton and Massillon.

(Narrative resumed.)

There is a lake cargo rate from the Ohio No. 8 field to Cleveland, Ohio, of $1.43. The Wheeling would have no rate to Lorain. The rate to Huron would be the same, $1.43 from the No. 8 field. This 82 per cent of the Holmes & Hallowell scale is higher than the lake cargo rates to Cleveland. That is from Ohio No. 8 to Cleveland. It will be readily observed that the rates constructed in this exhibit, which incidentally includes all the bases prescribed or used by the Interstate Commerce Commission for application on Ohio River coal, results in substantially higher rates than those here in issue.

I have prepared or had reproduced the mileage scale prescribed by the Interstate Commerce Commission in the Holmes & Hallowell case, 69 I. C. C. 11, for application on ex-lake bituminous coal from Duluth and Superior to interior points in the northwest, offered as Protestants' Exhibit No. 118.

(Protestants' Exhibit No. 118, Witness Carbine received in evidence.)

This exhibit is merely a reproduction of the Holmes & Hallowell scale as prescribed by the Commission on coal moving from the head of the lakes into the northwest. The coal that moves under this scale originates partially in Ohio No. 8 field, partially in the Pittsburgh, Fairmont, Southern high and low volatile fields, and is transported to Lake Erie ports under the lake cargo coal rate adjustment, thence [fol. 1173] moves by water to Duluth and Superior, is transferred there from vessels to docks and shipped to interior destinations.

By Examiner Curtis:

A large percentage in box cars, as Mr. Davenport testified. I have already stated in connection with Exhibit No. 117 what the rates would be to the four destinations involved, assuming that (1289) we are going to treat Lorain and South Lorain as one destination for this purpose, so I do not think it is necessary to repeat those rates. They are clearly set forth on Exhibit 117.

By Mr. Orcutt:

On my Exhibit 118, if the average distances to Cleveland were figured from Mingo Junction and Martins Ferry, the two actual points of origin under these proposed rates, and the average distances are shown to be approximately 153 miles, the rate under the Holmes & Hallowell scale would be $1.90.

I have prepared an exhibit showing what 85 per cent of the Holmes & Hallowell scale would be applied to the various mileage blocks, offered as Exhibit 119.

(Protestants' Exhibit No. 119, Witness Carbine, received in evidence.)

This exhibit contains a scale representing 85 per cent of
(1290) the Holmes & Hallowell scale, which percentage was employed by the Interstate Commerce Commission in the case of American Rolling Mill Company et al. vs. the B. & O. et al., 173 I. C. C. 357, decided on March 27, 1931, to fix rates [fol. 1174] on ex-river coal from Cincinnati to Hamilton and Middletown, Ohio.

Applying this scale to the average distance for which the suspended rates obtained makes rates of $1.16 to Canton and Massillon, and $1.55 to Cleveland, Lorain and South Lorain.

If the average mileage was used from the actual points of origin, that is, Mingo Junction and Martins Ferry, the rate to Cleveland under the 85 per cent of the Holmes & Hallowell scale would be $1.62.

I have prepared a scale constructed by using the rate of 77 cents per net ton for distances between 40 and 50 miles, and extending that rate, using the rate of progression employed in the Holmes & Hallowell scale, offered as Exhibit No. 120.

(Protestants' Exhibit No. 120, Witness Carbine, received in evidence.)

This exhibit contains a scale constructed by using a rate
(1291) of 77 cents per net ton for distances between 40 and 50 miles and extending such rate on the basis of the Holmes & Hallowell rate of progression.

(Narrative resumed.)

By Examiner Curtis:

I personally checked out the accuracy of this progression. The 77 cent rate here used as a basis for the constructive scale is that used or suggested by the Commission in I. & S. Docket 3282, Coal, Bituminous ex-river from Colona and Conway to Youngstown, Ohio, 163 I. C. C. 3, the distance from Conway to Youngstown being 43 miles, and from [fol. 1175] Colona, 41.7 miles. The distances for which the suspended rates are intended to apply would under this scale, produce rates of $1.11 to Canton and Massillon and $1.57 to Cleveland, Lorain and South Lorain.

By Mr. Orcutt:

The rate under that scale to Cleveland, Lorain and South Lorain if the average of the actual points of origin, Mingo

Junction and Martins Ferry were used, would be $1.65 per net ton.

I have prepared an exhibit setting forth the scale prescribed by the Commission in the so-called Slider case, 93 I. C. C. 65, offered as protestants' Exhibit 121.

(Protestants' Exhibit No. 121, Witness Carbine, received in evidence.)

(1292) This exhibit 121 sets forth the mileage scale prescribed by the Interstate Commerce Commission in the case of E. T. Slider vs. the B. & O. 93 I. C. C. 65, for application on ex-river coal from New Albany, Indiana to destinations in Indiana. Applying the average distances for which the suspended rates are intended to apply this scale produces rates of $1.125 to Canton and Massillon and $1.50 to Cleveland, Lorain and South Lorain.

If that scale were extended on the same rate of progression which is employed in its construction to cover a distance equal to the average distances from the actual points of origin, Mingo Junction and Martins Ferry, the rate then to [fol. 1176] Cleveland, Lorain and South Lorain under that extended scale would be $1.625 per net ton.

In the case of the American Rolling Mill Company et al. vs. Baltimore & Ohio Railroad Company, et al., involving the ex-river coal rates from Cincinnati to Hamilton and Middletown, the complainants referred to the ex-river rate of $1.04 maintained from Cincinnati to Indianapolis and other Indiana destinations (1293) in the so-called Gas Belt for an average distance of 88.4 miles. The Commission with respect to this contention stated in their decision, "The measure of the ex-river rate from Cincinnati to destinations in the Gas Belt was influenced by low rates from Indiana mines established after the supply of natural gas was exhausted for the purpose of holding industries that were originally attracted to that locality by the availability of cheap fuel. The rates to points just east of the Gas Belt are on a substantially higher level."

I have prepared a statement of rates on ex-river bituminous coal from Cincinnati, Ohio to Ohio destinations, with

distances via the short routes and ton mile earnings, offered as exhibit 122.

(Protestants' Exhibit No. 122, Witness Carbine, received in evidence.)

By Examiner Curtis:

These are not Commission made rates.

By Mr. Orcutt:

This exhibit sets forth rates, distances and ton-mile earnings on ex-river coal from Cincinnati to certain representative destinations in Ohio, east of the Gas Belt. It will be [fol. 1177] observed (1294) that this exhibit fully substantiates the Commission's finding in the American Rolling Mill case that the rates to points east of the Gas Belt are on a substantially higher level than to points in the Gas Belt. The distances are the short line distances, and the tariff authorities are shown. The rates are the so-called going rates to these destinations.

I have reproduced as an exhibit the mileage scale prescribed by the Commission in the State of Connecticut vs. the New Haven Railroad, 161 I. C. C. 211, for application on ex-tidewater bituminous coal from points in New England east coast to points served by the New Haven, offered as Exhibit No. 123.

(Protestants' Exhibit No. 123, Witness Carbine, received in evidence.)

We have had a great deal to do, Mr. Examiner, with this. I personally had a great deal to do in committee work in the east and with the New England lines regarding rates from tidewater to the interior. This coal that moves under these rates (1295) originates in Pennsylvania, Maryland, West Virginia and eastern Kentucky and moves to tidewater ports at Hampton Roads, Va., Baltimore, Philadelphia or New York; thence is transported by vessel to port cities in New England, where it is transferred from vessels to railroad cars and moved to destination on the New Haven Railroad, Boston & Maine or Boston & Albany.

By Examiner Curtis:

I am asked if there are any substantial differences in transportation conditions in New England as compared with [fol. 1178] the remainder of Trunk line and particularly central territory and if that isn't a higher rated territory up there. Well, in some ways it probably is. I am not in a position to go into details with regard to transportation conditions. I am merely offering these for what they are worth. The Commission has fixed these rates for application on coal that has a water movement.

It is an entirely different territory from central territory but as to the actual transportation conditions I am not able to testify. I do know it moves in open top equipment. It is handled in the same way that any other coal is handled. The fact that the New England (1296) roads may at one time have been in worse financial conditions than the Trunk line roads may have created some different rate basis on certain commodities, but so far as the movement of the coal is concerned, it is loaded in open top cars and transported to the destinations by a locomotive, the same as you transport other coal.

I am not qualified to speak of other commodities. The scale as indicated, was prescribed by the Interstate Commerce Commission in the case of State of Connecticut vs. New Haven, 161 I. C. C. 211, for application on ex-tidewater bituminous coal from points in New England served by the New Haven, Central of Vermont, Boston & Albany and Boston & Maine railroads to local destinations on the lines of those carriers. The rates prescribed are in units of gross tons and for comparative purposes I have also shown their net ton equivalents.

[fol. 1179] By Mr. Orcutt:

I have prepared as an exhibit the mileage scale which forms the actual basis for rates on ex-tidewater coal, published by the Boston & Maine to destinations on its line in New England, offered as Exhibit No. 124.

(Protestants' Exhibit No. 124, Witness Carbine, received in evidence.)

(1297) This exhibit No. 124 is the mileage scale which forms the basis for rates on ex-tidewater coal, published by

the Boston & Maine Railroad to destinations on its line in New England. This exhibit contains the scale printed on page 215 of the Interstate Commerce Commission's decision in State of Connecticut vs. New York, New Haven & Hartford Railroad Company, 161 I. C. C. 211, and is described by the Commission as being a compromise scale agreed to between the Boston & Maine Railroad and representatives of receivers of ex-tidewater coal. By reason of this compromise, certain cases attacking ex-tidewater coal rates on the B. & M. were withdrawn.

I have prepared a tabulation of distances and rates from tidewater points to interior New England destinations on the Boston & Maine compared with rates for similar distances under the Holmes & Hallowell scale, offered as protestants' Exhibit No. 125.

(1298) (Protestants' Exhibit No. 125, Witness Carbine, received in evidence.)

This exhibit contains a tabulation of distances and rates from tidewater ports to interior New England destinations [fol. 1180] for the Boston & Maine Railroad compared with rates for similar distances under the Holmes & Hallowell scale. The rates of the B. & M. Railroad are published on the gross ton basis, and for this reason I have, for comparative purposes, shown also their net ton equivalents.

By Examiner Curtis:

They are not in a large measure group rates up there. As to whether they are in small groups, you may find a few destinations, but ordinarily they publish a point to point rate. You do have some conditions where one road is meeting another road's rates which may bring in some other destinations to avoid fourth section complications. They are described as mileage rates, point to point rates.

Q. The reason I am asking that is, when you look side by side (1299) at the present rates on a net ton basis and compare them with the figures purporting to be on the Holmes & Hallowell scale basis, there are a lot of fluctuations there, up and down, which indicates that the Holmes & Hallowell scale of rates is higher by a couple of cents or more. In some cases it is the same; in some cases it is less.

A. That is because of the distances. You will find where it is over 80 miles the rate is $1.36; 80 miles and under $1.28. You will find that is all there is in that first column from Boston before the separation at the bottom of the first sheet. That is just simply because you happen to strike the break in the mileage basis.

(Narrative resumed.)

The mileage bases under the two sets of rates are not exactly the same, but there is very little difference.

As to whether there is quite a good deal of difference when you get to Boston and North Woodstock, N. H., take [fol. 1181] the first block. The rates published on tidewater coal under the compromise scale accepted by the Commission and the shippers and the railroad for the block between 75 and 80 miles—the rate is $1.34, whereas under the Holmes & Hallowell scale the rate for the block between 70 and 80 miles is $1.28. When you get over 80 miles, from 80 to 90 miles, in the Holmes & Hallowell (1300) scale you get a rate of $1.36, whereas this compromise scale on the Boston & Maine, from 80 to 85 miles it continues at $1.34 per net ton, but from 85 to 90 it is $1.38 as against $1.36 for the ten mile block under the Holmes & Hallowell scale, so there is very little difference. It is only that this compromise scale breaks at the five mile block in some instances, which throws it a little out.

Q. I don't want to take the lead here, but looking at the bottom where you get distances from 141 to 150 miles there seems to be quite a wide variation.

A. For the longer distances there is. I might say, Mr. Examiner as you perhaps know, that the large population in New England is close to the water. That is where the heaviest movements of tonnage are.

(Narrative resumed.)

By Mr. Orcutt:

I prepare as an exhibit a tabulation of the New England coal receipts as reported by the Massachusetts Special Commission on the Necessaries of Life, but in order to show the situation more completely, I have prepared an exhibit showing the actual tonnage transported by rail from the New England tidewater ports to interior destinations by the

New York, New Haven & Hartford, Boston & Maine and Boston & Albany railroads, which I think contains more [fol. 1182] valuable information than the other. So I have substituted that for it, offered as Exhibit No. 126. (1301) It is a statement of bituminous coal transported by rail from New England tidewater ports to interior destinations during 1929 and 1930.

(Protestants' Exhibit No. 126, Witness Carbine, received in evidence.)

The Witness: I might explain that the other exhibit prepared by the Massachusetts Commission on the necessaries of life only contained coal moved by water. It did not show the movement of coal to the points in the interior, so we felt this would be better evidence to have.

By Mr. Orcutt:

Exhibit No. 126 shows for the year 1929 there was a movement actually by rail on the New Haven, the Boston & Albany and the Boston & Maine from New England tidewater ports to interior destinations of 2,258,710 tons, and for 1930 there was a movement of 1,803,825 tons.

I have reproduced the scale of rates per net ton on lignite or bituminous coal as prescribed by the Commission in the Alberta Coal Sales Company, Docket No. 19997, offered as Exhibit No. 127.

(1302) (Protestants' Exhibit No. 127, Witness Carbine, received in evidence.)

This exhibit, as indicated, covers rates on lignite or bituminous coal which originates in Alberta, and these rates apply from the international border to points in North Dakota and Minnesota, and the Commission in its decision at page 545 of Vol. 142, stated: "It must be borne in mind that the rates assailed are in the nature of proportional rates."

[fol. 1183] By Examiner Curtis:

They, of course, only prescribed rates in this case from the international border points,

By Mr. Orcutt:

(1303) I have prepared an exhibit comparing the earnings per ton mile under the proposed ex-river rates with numerous rates for comparative distances in the same general territory, offered as Exhibit No. 128.

(Protestants' Exhibit No. 128, Witness Carbine, received in evidence.)

Exhibit 128 consist of two pages and compares the earnings per ton mile under the W. & L. E. proposed ex-river rates with numerous rates for comparative distances in the same general territory. These rates were selected to, and in my judgment do, set forth the general level of rates in C. F. A. territory for distances indicated. The exhibit, I believe, clearly and definitely shows the extent to which the rates here in issue are lower than coal rates in the same general territory.

I have prepared a list of the iron and steel company by-product coke plants and commercial or gas plants. That exhibit shows the annual coal carbonization capacity, (1304) offered as protestants' Exhibit No. 129.

(Protestants' Exhibit No. 129, Witness Carbine, received in evidence.)

It is understood that the contention is that the principal movement of coal under the proposed ex-river rates will be consigned to steel plants at Cleveland, Lorain, South [fol. 1184] Lorain, Canton and Massillon, Ohio, for coking purposes. In order that the record may indicate the location of by-product coke plants in C. F. A. territory generally I offer Exhibit 129, which is a statement of the names of the coke plants, their locations, number of ovens and annual carbonization capacity, classified first as to ovens manufacturing coke for the use of iron and steel companies, and, secondly, ovens operated for commercial or gas producing purposes.

The ovens operated for commercial or gas plants are shown on sheet two of the exhibit.

I have prepared a map of the State of Ohio and border territory on which is shown the location of coke plants and blast furnaces, offered as Exhibit No. 130. (1305)

(Protestants' Exhibit No. 130, Witness Carbine, received in evidence.)

I want first to ask that a correction be made in this map, which through error was not made before the final photostat. The map, exhibit 130, shows that at Sharpsville, Pa. there are coke plants. Those ovens are enclosed in a circle that was drawn on the map for the purpose of having them eliminated. The same is true at Dover, Ohio. There is no coke plant there. The blast furnaces at Dover has not been in operation for some time, but the equipment is still there. So that the black square enclosed in a circle at Dover should also be eliminated.

This exhibit is, as stated, a map of the State of Ohio and border territory upon which is spotted in blocks the loca- [fol. 1185] tions of coke plants, in dots the blast furnaces, and in stars the iron and steel plants. It indicates clearly the large development of the iron and steel industry within the territory of which Cleveland, Lorain, South Lorain, Canton and Massillon are a part, and where the all-rail coal rates as has heretofore been indicated are generally made in relation one with the other.

(1306) The exhibit further shows the intimate relationship which coke plants bear to the steel industry by reason of the large quantities of coke required in the manufacture of iron and steel articles.

I have prepared a list of the coke plants, blast furnaces and iron and steel plants within the territory, offered as Exhibit 131.

(Protestants' Exhibit No. 131, Witness Carbine, received in evidence.)

(1307) This exhibit consists of three pages. It shows a list of coke plants, blast furnaces and iron and steel mills that are designated on map, Exhibit 130, by various symbols, and shows which of the plants operate a coke plant, blast furnace or an iron and steel plant or all three.

I have prepared an exhibit consisting of two pages showing the number of deliveries on each of the several lines serving the destination points here involed and the switching which is absorbed on bituminous coal at those points, offered as Exhibit No. 132.

(Protestants' Exhibit No. 132, Witness Carbine, received in evidence.)

[fol. 1186] This exhibit No. 132, consisting of two pages, shows first the number of deliveries on each of the several lines serving Cleveland, Lorain, South Lorain, Canton and Massillon, Ohio (1308) second, the switching which is absorbed on bituminous coal by road haul carrier at such points; third, the intermediate switching charges absorbed at such points in instances where line haul carriers do not connect directly with the delivering line. This exhibit shows out of some 1845 deliveries at the destinations indicated but 229 are reached directly by the rails of the respondents.

I am asked to explain what I mean by deliveries, and how I use that term. That is deliveries to the industry. For example, if an industry is served by the New York Central it is shown under the heading "New York Central Railroad." If it is served by the P. R. R. it is shown under the heading "P. R. R." If it is served by both, it is shown under the heading of both. That is deliveries actually made to these industries.

By Examiner Curtis:

This exhibit is as of the present time, taken from the various tariffs which publish a list of the industries. That is shown on sheet number two. These are sidings, actual sidings, where you make deliveries. These are physical locations. (1309) In other words, these are delivery tracks.

By Mr. Orcutt:

These deliveries were obtained from a count of the industries listed in the switching tariffs of the several delivering [fol. 1187] lines at the points of destination. This obviously resulted in some duplications, because there are instances where a single plant is served by more than one line and consequently such plants are included in the summaries as many times as there are carriers serving them. These duplications, however, are not numerous, and if it were possible to eliminate them the totals would not — reduced materially.

My abbreviation CV RY means Cuyahoga Valley road, L&WV, Lorain and West Virginia, and RTRR, River Terminal of the Corrigan & McKinney Company. N&SS, (1310) Newburg, Souths-ore Railroad serving the Ameri-

can Steel & Wire Company and other plants. That is all I have on that exhibit.

This exhibit as I have stated shows the reciprocal and other charges absorbed on bituminous coal by road haul and other carriers at Cleveland, Lorain, South Lorain, Canton and Massillon, Ohio, and they range from ten cents per ton at Cleveland up to 32 cents per ton which is the Erie Railroad charge for switching. Page two shows the intermediate switching charges at Cleveland, Lorain, South Lorain and at Massillon, Ohio.

It is my understanding that the proposed ex-river rates of the Wheeling & Lake Erie Railway were made to reflect 57.46 per cent of the Pittsburgh district all rail rate to these destinations. In the answer of the Wheeling & Lake Erie to the petition of the protestants for suspension of the rates on ex-river coal to the destinations involved, the respondents stated that the ail-rail rate—I am quoting from their answer, the W. & L. E. answer at page 20—the all rail rate from Pittsburgh to Youngstown on bituminous [fol. 1188] coal is $1.34. The ex-river rate from Colona and Conway, Pa., to Youngstown described in Coal, Bituminous ex-river from Colona and Conway, Pa., to Youngstown, Ohio, I. & S. 3282, 163 I. C. C. 3, is 77 cents. This — 57.47 per cent of the all rail rate from Pittsburgh to Youngstown. The all rail rate from (1311) Pittsburgh to Cleveland is $1.84 per ton. 57.47 per cent of $1.84 is $1.06. The rate finally determined for Cleveland is $1.10, which is four cents per ton higher than the rate which would be produced by a strict application of 57.47 per cent of the all rail rate to Cleveland. And it was further stated that the reason for making the rate $1.10 to Cleveland was to clear the divisional arrangements on all rail coal. We have applied that same basis in this study. This basis does not result in exactly the same figures as the proposed rates, because, as I have stated, the Wheeling & Lake Erie evidently rounded out the rates to end in a five or a naught to clear their divisional arrangements. Consequently the rate proposed to Cleveland was 59.78 per cent of the Pittsburgh-Cleveland all rail rate. The impropriety of using this basis is indicated by the fact that while it so happens that the rate of 77 cents suggested by the Commission for application on the ex-river coal from Colona and Conway to Youngstown represents 57.46 per cent of the Pittsburgh district to

Youngstown all rail rate, it does not follow that the same percentage of the Pittsburgh to Cleveland, Lorain, South Lorain, Canton and Massillon rates will result in proper ex-river rates from Martins Ferry, Steubenville and other points on the W. & L. E. River Division. Conway and Colona are situated on the Pennsylvania Railroad and Pittsburgh nad Lake Erie Railroads respectively, between [fol. 1189] the Pittsburgh coal district and Youngstown, Ohio. The average distance from the Pittsburgh (1312) district to Youngstown is 96.5 miles; from Conway and Colona to Youngstown it is 43 and 41.7 miles respectively, or an average of 42.4 miles, which is 43.94 per cent of the average distance to which the Youngstown all rail rate applies. Otherwise expressed, the suggested Conway-Colona ex-river rate is 57.46 per cent of the all rail rate for a distance of about 43.94 per cent of the all rail haul. Taking the proposed rates of the W. & L. E. which are intended to apply for an average distance of 147.2 miles, whereas from the Pittsburgh district, the all rail distance is 170.3 miles and the rate $1.84. Here the rate proposed is approximately 57.46 per cent of the Pittsburgh district all rail rate, or, to be exact, 59.78 per cent thereof, whereas the distance is 86.44 per cent of the all rail distance from the Pittsburgh district.

In other words, as to Colona and Conway the rate proposed by the Commission is a greater percentage of the all rail rate than the mileage for that haul is of the all rail mileage, while from river division points on the Wheeling & Lake Erie the percentage of the all rail rate is less than the percentage of the mileage to the all rail mileage, or in other words, they have just reversed, for convenience, the situation in this instance.

(1313) I have a statement of rates in cents per net ton from Pittsburgh and Ohio No. 8 districts to representative destinations based on 57.46 percent of the Pittsburgh rate. (Offered as Exhibit No. 133).

[fol. 1190] (Protestants' Exhibit No. 133, Witness Carbine, received in evidence.)

This exhibit shows quite conclusively that if the percentage basis referred to, that is 57.46 percent, were used in establishing ex-river rates from W. & L. E. river points to Toledo, Troy and so forth, it would result in ex-river

rates ranging from 95 cents to $1.38 lower than the Pittsburgh district rates to the same destinations. It is obvious that any such basis of rates would in all likelihood jeopardize the all rail rate structure.

In my experience in rate making, I have never known or heard of any such basis being applied in making rates on coal, coke, iron ore or any other commodity, either by any railroad company or by any Commission. In this exhibit I want to call special attention to the rate to Toledo, Ohio. From the Ohio No. 8 district (1314) the rate is $1.89. The rate from the Pittsburgh district is $2.39. In other words the Ohio No. 8 rate to Toledo is fifty cents per ton less than the rate from the Pittsburgh district.

By Examiner Curtis:

I am asked if the breaking point in rates as between the Pittsburgh district on one side of the river and the Ohio No. 8 on the other side of the river is 50 cents. When you get west of the Sandusky Galion line. Toledo is west of the Sandusky-Galion line. As to whether a line drawn from Sandusky down to Galion isn't very far from the river, well it is in a north and south direction. The river flows more to the south, when you get down to Martins Ferry or Steubenville. But none of these points I have mentioned, or even this line gets very far from the river [fol. 1191] before this break of fifty cents in the rate occurs. That is an arbitrary break.

I think I can explain it better this way, Mr. Examiner; that the Pittsburgh district takes the same rate to points west of the Sandusky-Galion line, in what they call affected territory, (1315) which is the Michigan peninsula and the upper part of Indiana, as Connellsville, Fairmont and the southern high volatile fields, such as Kanawha, Kanawha-Thacker. In other words, what is known as the inner crescent districts.

Q. What I have in mind is this; that the all rail rates from the Pittsburgh group cover quite a goodly territory of origin. That also is so when you come to the Connellsville group of mines. There you have quite an area of group rates, the rates all the same from all mines in that group. Then you get up to Fairmont and you have a still higher rated group, but covering quite a territory including

a large number of mines. That is the rate situation on the east side of the Ohio River, we will say, generally speaking, but when you cross the river you get into the Ohio No. 8 group, which is quite an extensive group, but in the break between the one group and the other the fifty cents sharply occurs at the dividing line. Isn't that so?

A. It occurs at the Ohio River. That is, the mines on one side of the river take a fifty cent higher rate than mines on the other side of the river.

Q. Yes; and we are also confronted with that situation as between Pittsburgh, Connellsville and Fairmont in the breaking of the rates.

A. Not to that extent, but there is a differential relationship.

[fol. 1192] Q. Well, there is $1.34; and what is the Connellsville rate?

(1316) A. $1.34 to Youngstown and $1.42 from Connellsville. That is 8 cents. When you get to Cleveland it is $1.84 from Pittsburgh and $1.90 from Connellsville, which is 6 cents.

Q. The difference in the spread is on account of distance?

A. The Sandusky-Galion line is the division of the destination territory. On may, Exhibit 91, Sandusky is on Lake Erie, west of Cleveland.

Q. I was confused about that. But coming into Ohio No. 8, lying near the river, the Pittsburgh district is on one side of the river and the Ohio No. 8 on the other?

A. That is correct.

Q. Then when you get up to this destination territory, the farther you get away the greater the spread in the rate between the No. 8 on the one hand and Pittsburgh on the other.

A. That is indicated by the fact that the spread from Pittsburgh to Cleveland is 10 cents per ton, and when you get west of the Sandusky-Galion line it is fifty cents per ton.

Q. Now, if you get away from that idea of making rates on a group basis and put in a scale of rates based on mileage blocks, we will say, from Conway and Colona to Youngstown on the one hand, and from Mingo Junction, taken as a typical ex-river point to these four destination-, with probably some reservations that they ought to be extended beyond, then you are comparing two separate methods of

making rates; one on the mileage basis and the other on a group basis?

[fol. 1193] (1317) A. That is correct.

Q. Groups being made at both ends of the haul. That is, a group of origins and a group of destinations. Now, the two do not exactly compare, do they? That is, the comparison is difficult of spelling anything.

A. It is difficult, but it is the only practical way you can do it. You have got to apply the scale from these river shipping points.

(Narrative resumed.)

But our all river group rates will remain the same, provided you do not permit low rates to be put in from these river shipping points, which will break them down. You can do that in this proceeding. The rates under investigation are suspended, and we are contending they are too low and that they are going to endanger the all rail rate structure. But what you have in mind here is, if you fix a scale of rates on ex-river coal that is as far as you can go here. That is right, and if that results in disturbing the present all rail rate structure that would come subsequently.

(1318) The rate from the Ohio district, that is, the all rail rate to Cleveland today is $1.74. The rate to Toledo from the Ohio No. 8 district is $1.89, which is a difference of 15 cents per ton. I think that is due to group distance and these rates, Mr. Examiner, you realize have all been before the Commission in some hard fought cases and these differentials established between these various groups.

The rates are adjusted, so far as the all rail rates are concerned both with regard to points of origin and points of destination as Mr. Kern showed in his exhibits.

[fol. 1194] The Commission in this rate structure so far as grouping was concerned changed the differentials as between the groups. They have not always left the groups alone. We have had cases where they have taken a mine out of one group and put it in another. That was done on the theory of bring- about some equity as between mines close to a border point. (1319)

While we realize there is no rate proposed from Mingo Junction or these other river shipping points to Toledo, yet if that 15 cent difference as between the destinations

that exists today were adhered to it would result in a rate of $1.25. I am theorizing a little bit to show the effect of this on the all rail adjustment by injecting rates of this kind. If you take the $1.25 rate and add thereto the amount which Mr. Osbourne has offered here as a quotation, but which we do not for a minute admit is correct, of forty-five cents for moving coal by barge from Pool 6 down to Mingo Junction, and 12 cents transfer it makes a rate via water and rail of $1.82 from the Connellsville district and presumably it would be less from points in the Pittsburgh district, because he showed to Martins Ferry they charge 7 cents more. I think it is fair to assume that from shorter hauls in the Pittsburgh district, from Pool 4, for example, it would be somewhat less than forty-five cents even on his calculation. But even assuming these maximum figures, it would make a rate, as I have stated, of $1.82 in the Connellsville field, as against an all rail Ohio No. 8 rate to Toledo of $1.89 per ton. In other words, the rate from down along the Monongahela River as far as Pool 6 would be (1320) 7 cents per ton less than the all rail rate from the Ohio No. 8 field to [fol. 1195] Toledo, whereas on all rail coal the differential as fixed by this Commission is 50 cents per ton over Ohio No. 8, and as I have stated that 50 cent differential applies all through the Crescent groups, including Kanawha, Kanawha-Thacker, and eastern Kentucky on one of the, I suppose, hardest fought differentials the Commission ever had before it in I. & S. 774 and in the Ohio-Michigan Coal Rate Cases.

(1822) The Witness: This exhibit, 133, will show the difference that would result from the application of the basis referred to. It would result in rates to Detroit on ex-river coal of $1.49 as compared with the Ohio No. 8 district rate of $2.10 and as compared with the Pittsburgh district rate of $2.60 and to Buffalo, N. Y.—I am just picking out the key points—on a basis of 57.46 of the Pittsburgh district rate the rate would be $1.29 compared with the Ohio No. 8 rate of $2.24, or 95 cents per ton less, and as compared with the Pittsburgh district rate of $4.24, likewise 95 cents less.

We have heard mentioned here the fact that there are mines along the Ohio river, the Moundsville district, for example, or the Panhandle district, but even the Ohio dis-

trict mines today are equipped to load coal from mines into barges or can be so equipped, within a very short distance of where it is proposed to construct these facilities, so you can see the lower the rate on the river is the more danger there is to the all rail rate structure.

[fol. 1196] By Examiner Curtis:

I am asked how that is to be avoided as a practical matter where we are confronted, as we would be in such a case, with peculiar physical conditions.

My own opinion is this, Mr. Examiner; that, as I see it, these rates ex-river have got to be made with relation to some mileage scale. If it is a longer haul it has got to pay a higher rate. That is certainly obvious. How can it be otherwise? (1323)

Q. That is just what we felt in the Colona and Conway case. We felt there that we would have to have a rate that would not only permit the coal to be moved, but would be reasonably compensatory for the service, and at the same time not unduly any more than the natural advantages of the river compels, interfere with the coal industry and the railroads interested in handling coal all rail to the same destinations. We had the coal industry to consider; we had the railroads that handled it all rail to consider, and then we had this river situation; and then we were asked to fix the charges, as we are here, on a reasonable level of rates for coal from the point where it is lifted out of the river, put on cars and thence transported to destinations by rail. In other words, the ex-river rail rate. That is but what we have here. We may have some other question- in this case that were not presented to us in the other case. My whole object in throwing out these suggestions and making inquiries of the witness is to be helpful and at the same time try to find some sort of a yard-stick that can be used in fixing these rates. In the Colona and Conway cases we had very little information about the cost of handling coal, practically none, except they could haul 100 car trains on the river grade on the two best lines of railroad there were to be found in the [fol. 1197] United States, if not in the entire world; and the empties coming back were in part used to haul other commodities. (1324) The situation in the two cases, of course,

turned out to be different in some respects here and there, different in the grade, different in the utilization of cars, perhaps a difference in the ability to haul coal at a lower cost on the one hand, and a somewhat higher cost on the other.

The Witness: Mr. Examiner, I would like to say right here, and I would like to call your attention to the report in the Colona-Conway case, at page 5, where you refer to distances from Colona and Conway, to certain intermediate points to Youngstown, and where you state that the Holmes & Hallowell scale rate for distances to 40 and over 40 miles is 94 cents. That happens to be a rate for that distance in the Holmes & Hallowell scale, and if you take 85 percent of that you get a rate of 80 cents a ton, which is the rate you recommended in the proposed report.

Examiner Curtis: But in the final report I think the Commission added a half a cent to it.

The Witness: At the same time the Hamilton and Middletown case was under consideration, which involved ex-river coal rates from Cincinnati, and, as you recall, Examiner Berry handled that case and also collaborated with you in hearing the testimony in the Colona and Conway cases and when the final decision came out in the Hamilton-Middletown case it indicated that the basis proposed of 82 cents to these two destinations should be 80 cents, or 85 [fol. 1198] percent of the Holmes & Hallowell scale. Under those circumstances it looks to us as though the Commission had in mind fixing (1325) rates on that scale basis.

Our position here is that without admitting or agreeing that 77 cents is a proper rate from Conway and Colona to Youngstown, we believe that the rates from Mingo Junction should not be less than the rates determined by a progression of the 77 cent rate on the same rate of mileage progression as is used in the Holmes & Hallowell scale for the additional mileage involved in those hauls. There certainly should not be less than 85 percent of the Holmes & Hallowell scale used by the Commission in the Hamilton-Middletown case. I think as I go on with my testimony it will be clear that unless some such basis is used you are going to absolutely disrupt all these coal rates and cost these railroads a good many millions of dollars.

(1326) By Mr. Orcutt:

I have prepared a statement of active mines in the Pittsburgh district on the Pennsylvania Railroad, P. & L. E. and other carriers from which the distance to Cleveland is less than 154 miles. (Offered as Exhibit No. 134.)

This exhibit shows, as the heading indicates, the distances from mines in the Pittsburgh district now taking the $1.84 rate to Cleveland, Ohio, that are less than the distance from Mingo Junction to Cleveland. In other words, the rail haul direct from these mine tipples to Cleveland would be less than it would be from Mingo Junction. In other words, less than the rail movement after they had already paid for their river transportation. I don't think [fol. 1199] I have any further comment on that. It is pretty obvious what that represents.

I have made a comparison of distances from rail and river mines on the Monongahela and Allegheny, via the all rail route, the river and rail distance from Mingo Junction on the Wheeling & Lake Erie. (1327) (Offered as Exhibit No. 135.)

(Protestants' Exhibits 134 and 135, Witness Carbine, received in evidence.)

This exhibit shows the number of mines along the Monongahela and Allegheny Rivers which have rail and river tipples, and that information is taken from Respondents' Exhibits 58, 59 and 60. It shows the distances via the all-rail lines to Cleveland. It shows the distances via the river to Mingo Junction and the distance by rail from Mingo Junction to Cleveland. The authority for the river distances is shown on the exhibit. I would call attention to the fact that the distance by rail from the Horner and Oakmont mines having river and rail tipples to Cleveland, via the Pennsylvania Railroad, is shorter than the rail distance from Mingo Junction to Cleveland, as shown in Respondents' exhibits filed by Mr. Durham.

Q. In other words, when that coal is at the mouth of the mine it is actually closer to destination that it is after it has (1328) actually undergone a hundred miles of river transportation and is then turned over to the Wheeling & Lake Erie.

A. Well, in this particular instance the distances are,

from Harmer 85 miles and from Oakmont, 89 in Mingo, and the distance from Mingo to Cleveland shown by Mr. Durham's exhibit is 154 miles.

Q. In other words, they haul it eighty-some miles and get no closer to destination and turn it over to the Wheeling & [fol. 1200] Lake Erie, which carrier is willing to absorb the river transportation in order to get the business?

A. That is correct; and it will be seen that the distance by rail from a number of the other mines shown in this exhibit are materially shorter than the distance via river and rail to Cleveland.

(Narrative resumed.)

I have a statement showing a comparison between the distances from Conway and Colona, Pa., to Mingo Junction, Ohio, and Wheeling and Lake Erie Ohio River points of destination here involved. (Offered as Exhibit No. 136.)

(Protestants' Exhibit No. 136, Witness Carbine, received in evidence.)

(1329) This exhibit is intended for the information of the examiner so that he would have before him the distances accurately from all these points mentioned to these six destinations, using the distances taken from respondent's exhibits Nos. 40, 41, 42 and 43. It is shown that to Canton the actual distance via the Wheeling & Lake Erie Railroad is 92.1 miles. Based on the Holmes & Hallowell scale for that distance the rate would be $1.45; on 85 percent of the Holmes & Hallowell scale the rate would be $1.23; and on the basis of the 77 cent rate suggested from Colona and Conway to Youngstown, progressed on the Holmes & Hallowell rate of progression the rate would be $1.20.

To Massillon the distance is 87.7 miles. The rate on the Holmes & Hallowell scale would be $1.36; on the basis of 85 percent of the Holmes & Hallowell scale the rate would be $1.16 and on the basis of 77 cents progressed, the rate [fol. 1201] would be $1.11.

To Cleveland, Lorain and South Lorain, the actual distance is 154 miles. On the Holmes & Hallowell scale the rate would be $1.90; on 85 percent of the Holmes & Hallowell scale the rate would be $1.62, and the 77 cent rate progressed would give a rate of $1.65.

By Examiner Curtis:

I am asked if in making some of my studies and comparisons if I have taken into consideration the fact that two of these protestants will be able to handle this (1330) river coal from Colona and Conway not only to Youngstown, but can put in rates on the same rate of progression to Cleveland and maybe some other points. We have given some consideration to it, but we don't know what the rates would be——

Q. Of course, the Baltimore & Ohio couldn't get in on that; neither could the Chesapeake & Ohio on their southern coal, or the Norfolk & Western. But the Pittsburgh & Lake Erie do come here and they do offer to handle some of this coal, whatever they can get, over their rails from Mingo Junction. All these things, of course, are in your mind when you are making your study.

A. Yes, sir. If you care to hear it, I can tell you what my view is with respect to that. The roads you mention, the Pittsburgh and Lake Erie and the Baltimore & Ohio have spent a great deal of money in this territory developing their lines and territory, have spent a great many millions of dollars. The Wheeling & Lake Erie has never spent a cent in this territory so far as developing these mines. I think it is quite a different thing when it is a [fol. 1202] question of short hauling ourselves and taking this coal at some intermediate point, not in the region between the mines and the destination and another railroad attempting to make an unduly low rate to take business away from these carriers. We have no objection to their making ex-river coal rates, but they have got to be on some reasonable basis. (1331) It must be perfectly obvious that if there is any point on the Monongahela River or the roads now serving this district where coal tipples could be located to take coal out of a barge and put it on the car, where the distance would be no greater than from Mingo Junction—are we to be denied the right to transport the coal in order to permit another railroad that has no interest in the territory to come in and make rates that will deny us to that traffic,

Q. Of course, the Baltimore & Ohio is so situated that it can not use any river facilities at all: is that correct?

Mr. Fitzpatrick: That is as I understand it.

Examiner Curtis: Not in that territory. I suppose it is possible for you to reach the river along your Ohio River Division?

Mr. Fitzpatrick: Yes, sir.

Examiner Curtis: Then you could get into this if you wanted to?

Mr. Fitzpatrick: But they would have to make some rates that would make it desirable. We wouldn't get into it at $1.10 per ton.

Mr. Martin: I would like to make this observation, since Mr. Carbine has placed an interrogation on the record. His argument is apparently that the Wheeling & Lake Erie [fol. 1203] should not be given the right to put in ex-river rates which will divert to the Wheeling & Lake Erie any of the business in the (1332) Pittsburgh, Fairmont or Connellsville district, because those territories have been built up by these protestant railroads and the Wheeling has not put any money into these territories. Now, his argument gets to the point logically where the Wheeling must put in ex-river rates on such a high basis that no coal would move from these territories, because he says we should not be entitled to break into that territory. It all results in the absurd conclusion that we be entitled to put in reasonable ex-river rates which are so high that they would move no traffic and therefore would be entirely unreasonable.

Examiner Curtis: Well, I didn't get from Mr. Carbine's expression that he thought that rates would have to be put in ex-river on a basis that would not induce shippers of coal to move their coal by river and then by rail in competition with inland carriers, because it is obvious that ex-river rates that will not induce the movement of ex-river coal would be nothing but paper rates.

The Witness: I said unduly low rates. They may have rates from Mingo Junction on coal coming up the Ohio River or coal coming out of the Ohio districts or the Moundsville districts where the hauls are shorter. They may have some advantage there. You can't equalize those things. I say they are not entitled to unduly low rates merely for the purpose of taking this coal away from lines already established in the region.

[fol. 1204] Examiner Curtis: In other words, I gathered your statement (1333) was general; you were not going into the measure of the rates at all.

The Witness: So far as the Baltimore & Ohio is concerned they are in this territory and have a great interest in it. We don't know where this thing is going to eventually lead to, Mr. Examiner. This is an extremely important case to these railroads. We are all here protesting against it, the Baltimore & Ohio as well as our company, and the Pittsburgh & Lake Erie, the C. & O., the N. & W., and all these railroads.

(After discussion between counsel and the Examiner, Tr. 1333-1336, the following occurred:)

(1336) By Mr. Orcutt:

I am asked if I have finished my statement. I think I might call to the Examiner's attention this fact; at Clairton, Pa., there is a great deal of coal taken out of river barges and taken in the Steel Corporation's plants there. That is served by the Bessemer & Lake Erie and the Pittsburgh & Lake Erie.

By Examiner Curtis:

There is no congestion at Pittsburgh; there never was to my knowledge.

By Mr. Orcutt:

I have an exhibit on ex-lake ore rates which was prepared in our office at Philadelphia, not for this case, but for cases involving rates on iron ore, which I would like to offer in connection with the exhibit Mr. Adell submitted containing ex-lake ore rates, as his exhibit No. 72. (Offered as Exhibit 137.)

(Protestants' Exhibit No. 137, Witness Carbine, received in evidence.)

[fol. 1205] This exhibit shows the history of the ex-lake iron ore rates from a time just previous to the decision of the Commission in the Iron Ore Rate Case, Docket 6210, 41 I. C. C. 181, July 10, 1916, and supplements; 44 I. C. C. 368, April 25, 1917, and 48 I. C. C. 650, February 13, 1918, to date.

In connection with Mr. Adell's exhibit No. 72, there was some question as to whether or not the ex-lake ore rates had been increased under General Order 28. This history

shows no such increases was made under the Director General's order. The distances are the average distances to the various groups as taken from the Commission's decisions in that case.

The lake cargo coal rate from Ohio No. 8 fields via the Wheeling & Lake Erie is $1.43 per net ton.

(1338) That rate is applicable on coal for trans-shipment via lake. It is correct, that in this case they are proposing ex-river rates applicable from the same regions that lake cargo rate is applicable to of $1.10. In other words, they are proposing an ex-river rate of 33 cents less than their lake cargo rate. I think it would have an effect upon the lake cargo adjustment.

I am asked would the proposed rates have any effect upon the Ohio No. 8 commercial rates. I believe it will be used as a basis for operators in the No. 8 field, or for consignees at the destinations involved asking for lower rates on coal from these districts.

[fol. 1206] Since these proposed tariffs, or these suspended tariffs were filed I have heard of complaints being filed by shippers seeking reduction in the Ohio No. 8 commercial rate.

I am asked if I have any reason to think that other and further demands will be made. (1339) I believe it is going to result in demands from others for reduction in the all rail rates. I have listened to the testimony in this case from the interior shippers, pointing out that these low ex-river rates will prejudice their situation. I haven't the slightest doubt that there will be others who will demand some reduction in their all rail rates. I am asked if there is any particular reason for thinking that. I have observed that there are representatives of the Ohio No. 8 district here, and I think they are interested——

I am asked if I have any comments to make on respondents' exhibits, particularly the ones referring to the anthracite rates and the one referring to the fifty cent rate on the C. & O. (1340)

We have had this fifty cent rate submitted in the Colona and Conway case, and also in the Hamilton and Middletown case, and we submitted some testimony with respect to it in those proceedings. In the American Rolling Mill case the Commission referred to it. In 171 I. C. C. 360, the Commission said:

"The rate from the Logan fields to Huntington was 25 cents on June 30, 1917. If that rate had been affected by the increases and reduction applied to coal rates generally it would now be 76 cents."

In the case involving rates on Coal, Bituminous, ex-river from Colona and Conway, Pa., to Youngstown, Ohio, 163 [fol. 1207] I. C. C. at page 11 the Commission states:

"Protestants also refer to a rate of 50 cents on bituminous coal for movement on the Chesapeake & Ohio from 110 miles in the Logan district of West Virginia to Huntington, W. Va., for shipment by water to the Ohio River for average rail hauls of 81 miles. They estimate that two million tons of coal per annum moves under this fifty cent rate and state the cars used moved empty back to the mines. This rate has been in effect for more than twenty years and was not affected by the general increases of 1918 and 1920 and the general reduction of 1922."

I have some information, of course, as to the other facts in connection with it, but I don't care to go into that if there is objection to it. It is an unduly low rate in our opinion. (1341) It has been there, as the record shows, for twenty years. It is over a branch line of the C. & O. Railway, but there were certain circumstances connected with the original establishment of the rate of which I have been advised. But, as I say, it might be objectionable to Mr. Martin to have me state them.

By Examiner Curtis:

It applies from a branch line and there used to be an old arrangement between the Island Creek Coal Company and the C. & O. The Island Creek Coal Company used to move the coal themselves, and then the C. & O. made a contract to move it in return for which they made a very low rate and that rate has been in there for all this time with certain variations in it up and down, but they have always been obliged to maintain it on a low basis because [fol. 1208] of the contract they had with the Island Creek Coal Company. There are the facts as I have always understood them and as they have been explained to me.

(1342) Examiner Curtis: I don't know where I got it from, and, of course, my remarks cannot be considered as

binding on anybody when it comes to stating a fact of my own knowledge, but somewhere and somehow I had gathered the idea that the fifty cents was originally put in, or rather compelled by competition on the Kanawha River, and put in on the main lines of the C. & O. Railway and it may have later extended to the movement of coal from this branch.

The Witness: Of course, that is what does occur. There are mines having direct tipples on the river. There are some other short switching roads making a low rate down the river; about 18 cents a ton, a very short haul on a switching rate.

(Narrative resumed.)

By Mr. Orcutt:

In Mr. Adell's Exhibit 71, he shows proportional rates on anthracite coal from Benwood Junction, New Junction Transfer, Salamonica to various destinations through Pennsylvania and Ohio. I just want to say very briefly in connection with that that anthracite rates are made quite generally throughout Central Freight Association territory by certain carriers. For instance, the Pennsylvania Railroad publishes a joint through rates through the Pittsburgh gateway to Cleveland and other places, and other carriers maintain proportional rates (1343) to and from the so-called rate breaking points, Buffalo and Est Buffalo, which are in turn met by other lines through Junction transfer [fol. 1209] or Salamonica, but in practically all instances equal the joint through rates that are maintained by the other roads. The Erie no doubt also maintains a through line of rates from their producing fields to destinations in central territory and some of the other roads have them in more or less of a general way, so that we have always considered the rates published by the lines beyond the transfer as nothing more than a proportion of the through rate, at least, that is the way the railroads have always looked upon them, and, as I say, they are really made to meet the through rates.

I am asked if I heard the statement of respondents, that they might be willing to restrict the application of these rates to coal coming down the river solely instead of coal coming up the river. There are mines on the Pennsylvania

Railroad which could utilize these rates. There is a mine at Powhatan, Ohio, along the Ohio River, below Martins Ferry, adjacent to the river, and I have been informed that if these coal rates go in, it is the intention of the operator of that mine to install river facilities and move coal up to Mingo or some other point where they install facilities and ship on these ex-river rates.

(1344) The North American Coal Corporation operates that mine, through, I believe, the Powhatan Mining Company, the latter being an operating organization. But the North American Coal Corporation is the head of it.

That mine is not at the present time equipped with a river tipple. It is one of the largest mines in the State of Ohio. It has a large undeveloped area attached to it. [fol. 1210] It is local to our line.

In the Pittsburgh, Lisbon & Western case, the Commission made a comment about transfer facilities being made available to all alike, (1345) and it was very much in the case as we went through it. In the decision in Finance Docket 6754, 150 I. C. C. at page 55, in stating their conclusions the commission said:

"Should it be found necessary thereafter, as a result of our further investigation to grant a certificate for the construction of a new railroad line between Smith Ferry and the Youngstown district consideration will be given to the imposition of a condition that Lisbon shall not be under the control, direct or indirect, of the Pittsburgh Coal Company or any other industry or industries, and the further condition that terminal facilities should be provided on the Ohio River which shall not be under such control and shall be open to the free use of all shippers."

It is my understanding that the facilities at Mingo Junction now available will not be available to all shippers alike, but they will be utilized and restricted to the use of the United States Steel Corporation for moving their own coal from their own mines to their own plants, in their own barges and with their own tow boats.

By Examiner Curtis:

That is now wholly by water. (1346) That would be that they would move coal from Pool No. 6, for example, down the Monongahela and Ohio Rivers in their own barges to

Mingo Junction, but at the present time they are already [fol. 1211] hauling large quantities of coal all river to Clairton, but here they would haul it to the Mingo and load it on cars through their own transfer facilities to their plants at Cleveland, Lorain or wherever else they may want to send them.

By Mr. Orcutt:

And the loading of those cars from the barges, in accordance with the testimony in this case, would be done upon the plant property of the Carnegie Steel Company, and the cars will be situated on tracks belonging to the Carnegie Steel Company. In that connection, of course, it is my understanding that they would have no thought of publishing any transfer charge for performing that service. They would do it at what it cost themselves.

(1347) I only have this to say in connection; that this whole situation has given grave concern to the executives of these roads. It is a matter of sufficient importance for the presidents of the railroads to have given it consideration, and I will say that it is my judgment, and the judgment of others, that if these rates are established it is going to seriously menace and prejudice the all rail adjustment on coal rates in this territory. It will have very far reaching consequences and the railroads can ill afford to in whole or in part suffer this tremendous loss in revenue that, as I see it, will inevitably result.

[fol. 1212] (1348) F. E. WILLIAM was thereupon called as a witness for and in behalf of protestants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Fitzpatrick:

My name is F. E. William. I am employed by the Norfolk & Western Railway, as Coal Freight Agent at Roanoke, Virginia. I have been in my present position since 1927.

My testimony is offered in this proceeding for the carriers serving the southern West Virginia, Kentucky, Vir-

ginia and Tennessee coal producing districts. These coal producing districts are located in what are known as the Inner and Outer Crescent Districts as described in detail in I. C. C. 46, and 80 I. C. C. 663, and they are graphically outlined on Kern's Exhibit 91.

I am asked what is the attitude of the carriers for whom I speak toward the suspended rates. (1349.)

We do not object to the publication of ex-river rates by the Wheeling & Lake Erie, provided they are placed on a reasonable level and bear a proper relation to the other coal rates. The testimony of preceding witnesses, Carbine and Kern, was designed for the purpose of showing that the suspended rates are too low and not properly related, and we concur in that testimony.

There is no fixed relationship between the rates on coal from the Ohio No. 8, Pittsburgh, Connellsville, Fairmont and other northern districts, on the one hand, and the Kanawha, Kenova-Thacker, New River, Pocahontas group, and other southern districts, on the other hand, to the des- [fol. 1213] tination territory directly east of the Sandusky-Galion line, including the destinations here involved. There is a very definite relationship between the northern districts and the southern districts to points west of the Sandusky-Galion, Ohio line. Nevertheless, the southern coal producers compete for business at destinations which are east of the Sandusky-Galion, Ohio line, and in the past they have sold substantial amounts of coal in that territory, especially to points where steel is manufactured. For instance, the movement from the southern districts on the N. & W., C. & O., L. & N. and Virginian during the year 1930 to Cleveland was 1,790,589 tons; to Canton and East Canton, 151,084 tons; to Lorain and South Lorain, 304,771 tons; to Youngstown, 451,347 tons. These figures are taken from report of the Ohio Bureau (1350) of Coal Statistics, Form R. And that coal is marketed at those destinations in competition with coals from northern origin districts, including the coal which would move on the suspended ex-river rates.

Even if these low ex-river rates are confined to destinations east of the Sandusky-Galion line, there is grave danger that the shift in tonnage to the river-rail routes would force reductions in the all-rail rates from the same and competing districts, including the southern origin districts,

thus causing reductions of rates upon which millions of tons of coal are moved annually.

Moreover, the industries at the destinations to which the suspended rates apply compete with similar industries at points west of the Sandusky-Galion line, such as Toledo, and it is altogether probable that this competition would force the extension of the ex-river rates to those other [fol. 1214] points or cause reductions in the all-rail rates to keep those industries on a proper relative level. Because (1352) of the relationships of origin districts and destinations to the territory west of the Sandusky-Galion line, such reductions might spread throughout central territory and cause reductions in the rates upon which many millions of tons of coal are moved.

Prior to June 8, 1931, there were in effect ex-river rates on coal from Cincinnati to Hamilton and Middletown, Ohio, of 91 cents per ton. I have a statement showing the ex-river, the all-rail and the total tonnage moved to Miami Valley points, the principal of which from a coal consuming standpoint are Hamilton and Middletown, January to May, 1931, inclusive, compared with the same period in 1930, which I offer as my Exhibit No. 138. (1353.)

(Protestants' Exhibit No. 138, Witness William, received in evidence.)

The authority for the figures shown in Form R of the Ohio Bureau of Coal Statistics.

This exhibit shows that the total tonnage decreased 43,066 tons or 6.49 per cent; that the all-rail tonnage decreased 92,041 tons, or 13.98 per cent, while the ex-river tonnage shows an increase of 48,975 tons, or 909.64 per cent.

Effective June 8th, 1931, the rate on ex-river coal from Cincinnati to Hamilton and Middletown was reduced to 80 cents as a result of the Commission's decision in the American Rolling Mill Company case, 173 I. C. C. 357; and that rate was published in the following tariffs: [fol. 1215] B. & O. I. C. C. WL 9935; Big Four I. C. C. 8514; P R. R. F-1886.

Effective June 8, 1931. The heavy shift of all-rail tonnage to the ex-river route took place under an ex-river rate which was 11 cents higher than it is today, and it is not unreasonable to expect that under a rate that is 11 cents lower there will be a heavier diversion of tonnage from the all-rail routes to Hamilton and Middletown.

The present all-rail rates to Hamilton and Middletown, Ohio, (1354) from the Inner Crescent $2.02; from the Outer Crescent, $2.12 per net ton, published by the N. & W. Railway, in Tariff C. & C. No. 4727, I. C. C. No. 3115-B.

Those rates are not on the same level that prevails generally throughout Central Freight Association territory. They are depressed. A good many years ago the erstwhile C. H. & D. Railroad published a low rate from its Jackson field to Cincinnati to meet Ohio River competition and that rate was held as a maximum at intermediate points. That condition at Hamilton and Middletown has been perpetuated.

I referred to the Jackson, Ohio, field. That is referred to as a coal district in Davis' tariff, and there is direct competition in the Miami Valley between the coals from the Ohio fields, including Jackson, Ohio, field, and the coals coming from Crescent mines, served by the N. & W. the C. & O. and the Virginian, and when the rates were reduced from the Jackson, Ohio, field to Cincinnati to meet the water competiion, it likewise compelled a reduction in rates from the Crescent fields that were in direct compe-
[fol. 1216] tition with that coal at Cincinnati. So that as a result, the depression which was first reflected in the rates from Jackson district was extended later from the origin districts in southern West Virginia. (1355.)

I am asked if the shift of tonnage to the river routes led to demands by certain coal producers for reductions in the all-rail route rates. Immediately following the issuance of the Examiner's report in the case of the American Rolling Mill Company et al. vs. Baltimore & Ohio, and the Big Four, 173 I. C. C. 357, we were importuned by individual shippers on the Norfolk & Western and by the Operators Association of Williamson field for reduction in our rate to Hamilton and Middletown. They claim that unless something is done in that direction they will probably lose to other producers who can utilize the river rail routes, contracts which they have had extending back over a good many years. This is an illustration of how the publication of low ex-river rates have an influence upon the all-rail rates.

(1357) I have another exhibit showing a comparison of the ex-river rates proposed by the W. & L. E. and the all rail rates effective from various West Virginia, Pennsyl-

vania and Ohio districts and I offer it as my exhibit No. 139.

(Protestants' Exhibit No. 139, Witness William, received in evidence.)

I think that exhibit explains itself, in that it is merely to show what additional advantage the coal that moved via water and rail would have as compared with the rate situation as it is today.

[fol. 1217] I am asked if I can compared the loaded revenue cars handled on the Norfolk & Western Railway during any like periods of 1929, 1930 and 1931.

I had such a statement prepared for me by our Superintendent of Transportation and it shows that for the first six months of 1929 we handled 791,259 loaded cars. For the same period of 1930, 729,100 cars; for the same period in 1931, 569,577 cars, which shows that the 1931 figures, as compared with the 1929 figures represent a decrease of 28.02 per cent. I am asked to compare the revenue ton miles on the Norfolk & Western during a period of 1931 as compared with a like period for 1929. (1358) The figures show that the 1931 tons one mile of freight handled represented a decrease of 34.88 percent under 1929.

Q. And how did that compare with the decrease in the number of cars transported in 1930, compared with 1929?

A. A greater decrease.

Cross-examination.

By Mr. Martin:

On that last point, I have compared the periods of the first six months of 1929 with the first six months of 1931.

I can not think of any six months' period in the history of the Norfolk & Western that had any larger volume of traffic than the first six months of 1929.

(1359) My familiarity with the traffic conditions there would advise me if there had been any such six months' period, so that represents the peak of the traffic volume on the Norfolk & Western for any six months' period. I know that the year 1931 has been a very depressed year industrially.

[fol. 1218] The figures I have given you represent all traffic. I have not assembled similar figures as to coal only.

I would say that the decrease has been greater in coal than other traffic. I can't say off hand whether these shipments that are made from our mines to Cleveland, Canton, Massillon and Lorain have been increasing during the period from 1925 down to 1930. I haven't any figures before me.

(1360) All I can say on that is, from the many figures I have seen on that was not particularly in connection with this case, and would show in some instances we had a decrease and in some instances some increase, but just where that lies I can't say at this time. Where there had been increases we have not necessarily been displacing other coal. There has been some tendency for the Inner Crescents to increase their shipments to Central Freight Association territory and to Ohio particularly. I think it has been a rather substantial tendency.

I do not think the exhibits in this case show that the shipments from Ohio mines to these four destinations have been falling off constantly, while the shipments from the Crescents to the same destinations have been forging ahead constantly. They showed some decreases. I can't answer whether in the main it has been an increase.

I am referred to my exhibit 138 showing an increased movement of ex-river coal to Miami Valley points in Ohio.

(1361) There has been a movement on and off for a number of years, but not to the same extent as appeared on the records in the first five months of this year. I can't answer whether generally speaking the movement of ex-river coal through Cincinnati to Ohio, Michigan, Indiana and Illinois points has been increasing from year to year.

[fol. 1219] I did not look into that. I am asked if I know of any rates that have been broken down by this ex-river rate to Cincinnati. The ex-river rate from Cincinnati originated many years ago, and the conditions that were considered at that time are reflected in the rates today. I can't give you a definite answer to that, except I know this; that at one time, just over night, they found gas over in Indiana.

I have not known of any instance where any commercial rates have been broken down on account of these ex-river rates from Cincinnati.

(1362) I spoke of the effect of the Jackson field on the rates to Cincinnati, or rather the rate from the Jackson field to Cincinnati and the rates from the southern fields to Cincinnati, and I am asked if the Jackson field is not any

considerable factor in the shipments of coal to Cincinnati any longer. Not so much today, no. I would say the field is practically exhausted. As I understand it, the cream of the coal, so they say, is practically mined out of that field.

Redirect examination.

By Mr. Fitzpatrick:

I am referred to Mr. Martin's question to me if I knew of any all rail rates that were adjusted because of the publication of ex-river rates from Cincinnati, to which I answered "no". I am asked if there is any explanation I wish to add to my answer. Merely to say this; that the all rail rates today reflect the depressed situation caused by the [fol. 1220] industrial situation created in Indian which brought about the publication of these (1363) ex-river rates a good many years ago. That is, over night they found they had plenty of gas, or thought they had plenty of gas, and many industries were led to believe that these certain Indiana points would be a good place to locate, they being attracted by the low cost of fuel. Then their gas disappeared overnight and they found themselves stranded there, and in order to continue to hold these industries at these Indiana points, the carriers, particularly the Indiana carriers, offered low rates on coal, and I believe that was at that time reflected in the all rail rates from the Ohio mines as well as from the Crescent mines which were related to the rates from the Ohio mines, and, of course, that isn't within five years. That was probably fifteen or twenty years ago, and the men who made these rates are not here and we can't find out all the real causes for them. We know those are the paramount points that had some control in the measure of the rates.

I also answered Mr. Martin saying I knew of no like period, that is, no period of six months in which the cars handled by the Norfolk & Western happened to be greater in number than those handled during the first 6 months of 1929. I went back to the figures I had here from which we took this, back to 1920, and in making my answer I was merely speaking of the period from 1920 to date.

Recross-examination.

By Mr. Martin:

I am referred to my exhibit 138, Points in the Miami [fol. 1221] Valley and asked if that was in any sense directed to destination points in the gas belt. This exhibit was introduced to show what took place the first five months before the ex-river rate of 91 cents from Cincinnati to Hamilton and Middletown was reduced to 80 cents, and to show the shift of tonnage that had taken place in the five months prior to the reduction and merely goes to show it is reasonably to be expected that with an 11 cent lower rate there will be an increased shift of tonnage from the rail to the rail and water. Those points are not in the gas belt at all.

(Thereupon an adjournment was taken until Thursday, September 24, 1931.)

(Hearing was resumed, pursuant to adjournment, Thursday, September 24, 1931, at 10:00 o'clock a. m.)

Edward Briggs was thereupon called as a witness for and in behalf of protestants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

I am Assistant to the General Traffic Manager of the Wheeling & Lake Erie Railway Company. I occupied that position on May 12, 1930. (1366) I have occupied that position continuously since. I have charge of all traffic of the Wheeling & Lake Erie Railway Company, reporting to the General Traffic Manager, so far as rates and divisions are concerned.

[fol. 122[illegible]] I am shown a letter on the letterhead of the Wheeling & Lake Erie Railway Company bearing in the upper left hand corner the name "Edward Briggs, Assistant to the General Traffic Manager" dated "Cleveland, Ohio, May 12, 1930" file E. B. 22600-1647, addressed to Mr. R. S. Kern, Chairman, Coal, Coke & Iron Ore Committee,

Pittsburgh, Pa., and asked if that letter bears my signature. That letter was dictated by me and signed by me, and mailed for the purposes therein indicated.

(Mr. Orcutt offers this letter in evidence as Exhibit 116-A together with the first attachment.)

(Mr. Martin objects and after discussion, transcript pages 1366-1372, the following occurred:)

(1372) Examiner Curtis: I wonder if we cannot get correct information by amicable agreement.

Mr. Martin: We are perfectly willing to reach an amicable agreement, Mr. Examiner. We have shown them the correct list and we are now having it mimeographed so that it will be available as an exhibit.

Examiner Curtis: In the light of the discussion, the Examiner will overrule your objection and will admit this letter in evidence, or a true copy thereof, if that be more convenient for the parties. That may be marked Exhibit No. 116-A.

I would still reserve ruling as to admitting Exhibit No. 116 until some opportunity has been given to get some agreed statement of facts, which might purge, if need be, any errors in the statement offered as Protestants' Exhibit No. 116.

Now, do you wish to withdraw this original and put in a copy?

[fol. 1223] Mr. Orcutt: I ask leave to withdraw the original and offer in its stead a copy of the letter and the first attachment.

Examiner Curtis: It will be received and marked Exhibit No. 116-A.

(Protestants' Exhibit No. 116-A, Witness Briggs, received in evidence.)

(1374) Examiner Curtis:

This statement was prepared under my jurisdiction. Since that time I have been advised only recently that there may be some errors in the statement. I say only recently, since we are down here, and I will again take the stand and state what the facts are.

Examiner Curtis: That may be done at the proper time

under the direction of your counsel. You may now proceed to something else.

Mr. Orcutt: I would like a ruling upon the receipt of Exhibit No. 116, if you please, Mr. Examiner.

Examiner Curtis: I will defer that ruling until we can get what I consider to be undisputed information.

(After an informal discussion, which occurred off the record, the following occurred:)

Mr. Orcutt: I want to state for the record that whatever the respondents may show as to the figures on that exhibit, we will still insist that Exhibit No. 116 must be received in evidence. That is merely deferring our motion in that regard.

[fol. 1224] Examiner Curtis: Let the record show that the Examiner is (1376) deferring his ruling on the admission of Exhibit No. 116, heretofore admitted for identification only.

Now, will you please proceed?

(Cross-examination of the witness is deferred so he can complete the information.)

(1377) J. T. CARSINE thereupon resumed the witness stand and, having been previously sworn, testified further as follows:

Cross-examination.

By Mr. Martin:

I am asked to refer to my Exhibit No. 117. In this exhibit and in succeeding exhibits I have made a number of computations based upon or relating to the Holmes & Hallowell scale, (1378) and in that work I have familiarized myself with the Holmes & Hallowell cases, so-called.

I am asked if it is not a fact that the Holmes & Hallowell scales were prescribed for application by the shortest routes, embracing as a maxmum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic. It is my understand- that the distance was figured via routes not comprising more than three lines over existing lines participating in rates

from Superior and Duluth to the destinations. They were limited to the shortest distance included within the class which I have described, over not more than three lines. [fol. 1225] If, for example, from Duluth or Superior to the Twin Cities there was a route via lines A, B, & C which was shorter than the single line route via railroad D, the Holmes & Hallowell scale distance would be computed via the route A, B, & C, provided those lines were then participating in rates from Duluth and Superior to the destinations. I do not believe that line D would then be required to put in the same rate as the joint rate via lines A, B, and C, but if they (1379) desired to, they had that permission. If they desired to handle the traffic I have no doubt they would be obliged to.

I have only shown the distance via the Wheeling & Lake Erie on my exhibit No. 117. I have not shown any short-line distances on that exhibit. This is the only exhibit in which I have exhibited the Holmes & Hallowell scale itself. They are the distances actually prescribed.

The short line distance from the Wheeling & Lake Erie River Division points to Canton is 87.2 miles. That is the short-line distance so far as I am concerned.

(1380) It is a short line distance so far as these rates are concerned. So far as I know this is the short line distance from the Wheeling & Lake Erie River division points to Canton, and I know of no other. Certain of these river division points are also served by the Pennsylvania. I do not know the short line distance from Brilliant, Ohio, to Canton, Ohio. I never computed it.

I represented the carriers in the informal hearing before the Suspension Board. I had seen the reply of the Wheeling & Lake Erie at that time. (1381) I had been given the [fol. 1226] function of orally replying to or answering that reply. I had seen on page 9 of the reply the calculation showing the application of the Holmes and Hallowell scales to the short line distances from Ohio River points to Cleveland, Canton, Massillon and Lorain. I knew that you were making that point that the Holmes & Hallowell scales were applicable properly to short line distances. I answered it there, of course. I knew that as early as June of this year, and I knew that I was going to prepare a number of exhibits in this proceeding based upon the Holmes & Hallowell scale, and I knew that the Holmes & Hallowell scale as

prescribed for application in the northwest was via short line distances, participating in the rates, as I have indicated in some of my earlier answers. (1382)

I am asked if I can point out that limitation in any of the Holmes and Hallowell decision. Well, that is my understanding of how it was figured.

Q. I will be very glad to give you the opportunity to point that out, particularly in the light of this statement at page 713 of the Commission's decision in 60 I. C. C. page 713—"Distances under such scales should be computed via the shortest routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic," and the scale follows. Do you see anything there about participating in the rates?

A. No. But that was always my understanding. I have talked with the officers of the Northwestern roads about it; the road that participated in the rates were the roads that were defendants in the case.

[fol. 1227] (Narrative resumed.)

I made no effort to find out what the short line distances from these river points are. For the purpose of our case, I think that has nothing to do with it.

The Baltimore & Ohio stated that they were in a position to serve the plants of the Belmont Supply Company and ship coal from Martins Ferry to all four of these destinations, if they desire. I am asked in the event some Holmes and Hallowell scale were applied to them, what distances would be used for application to those points. I have not figured it.

I am asked whether it would be possible to apply this Holmes & Hallowell scale, or any variation of it, from Martins Ferry to these four points on the individual distances of the Baltmiore & Ohio, on the one hand, and the Wheeling & Lake Erie, on the other.

Of course, in answering that question I will say this, that the rates proposed—I don't know whether it will answer the question—will apply only over the Wheeling & Lake Erie. There is no other railroad attempting to or proposing to make any ex-river coal rates from any points in that territory. In the Hamilton and Middletown case the Commission took the actual distance over the routes as pub-

lished, and in the Colona and Conway case, and I think it is quite proper that they do so here. We are not suggesting the application of the full Holmes and Hallowell scale; we are suggesting a percentage of that. If you take into consideration minimum routes it might be the Holmes and Hallowell scale or higher than the Holmes & Hallowell scale.

[fol. 1228] I am asked if in the Conway and Colona case the routes of movement were the short lines. (1384). Perhaps it might have figured it by some theoretical route, like was shown me the other day. Through Beaver Falls and Pittsburgh & Lake Erie might be shorter from Conway than our own distance. Mr. Adell showed me some route there; but I am not saying that. If you are going to be very technical about this, I am perfectly willing to answer your questions; but I am afraid you are a little technical, and I wanted to be very careful in what I do answer.

The routes over which the Colona and Conway 77-cent rate was computed were the short line routes of the Pittsburgh & Lake Erie and the Pennsylvania to Youngstown, but not, I will say, via some route that might have been figured from Conway, for example, to Youngstown via Beaver Falls. I am asked if I know any shorter routes. I know this, if I might state it, that we figure our distance to Cleveland as 115 miles as shown in my Exhibit No. 136. Mr. Durham (1385) testified their distance was 109 miles. And upon inquiry of him as to how he determined it Mr. Adell showed me they figured it out through Beaver Falls over the Pittsburgh & Lake Erie and, I believe, the Erie. It may be possible if you figure the distance from Conway to Youngstown via Beaver Falls and Pittsburgh & Lake Erie you might get a shorter distance. I don't know that. I know the Commission used distances via the Pennsylvania Railroad from Conway to Youngstown and the distance via the Pittsburgh & Lake Erie from Colona to Youngstown in their decision in that case. And I presume that was the distance that they had in mind in fixing the rate.

[fol. 1229] This Holmes and Hallowell scale that I used was not the maximum scale. It was the scale that the Commission required to be established, plus the advance and reduction. As to whether it was called the maximum scale, nothing more than any other scale used, so far as I know.

My attention is called to the Commission's decision in 69

I. C. C. the second Holmes and Hallowell case, and I am asked if they do not set up there two scales, the basis scale and the maximum scale.

They show that in this decision But there is another decision following this, as I recall it, when the case was reopened, where they fixed a scale and which when you add the (1386) 35 percent increase authorized in Ex Parte No. 74 and the 10 percent reduction, makes the scale that I have submitted here. That is the scale they used and the scale they employed and the scale the Commission fixed.

It may be true that what the Commission was getting it was a scale of rates which would be reasonable as maximum reasonable rates.

I am asked if it is true that what the Commission was getting at in the Colona and Conway case was a scale or a rate, rather, related in some way to the Holmes and Hallowell scale which would be reasonable as a maximum reasonable rate on ex-river coal. I don't know that it is true, no. There is nothing in the decision to indicate just how the Commission arrived at that rate.

(1387) By Mr. Martin:

Q. I will hand you, Mr. Carbine, a copy of the Commission's decision in I. & S. 3282, 163 I. C. C. 3, and I will ask you to read the last sentence of the next to the last paragraph of the report on page 13.

[fol. 1230] A. What sentence is it?

Q. "Upon full consideration" and so forth.

A. Well, I prefer to read the whole sentence. I am not going to read part of the paragraph, if we want to get all of the facts in the record.

Mr. Martin: Mr. Examiner, I am certainly entitled to have read into the record a sentence bearing upon the question I asked, and if the witness is not supposed to it his counsel can amplify the statement on redirect.

Mr. Orcutt: Let me take it. I will read it into the record for you, Mr. Martin.

(After discussion, pages 1387-89, the following occurred.)

Mr. Martin: All right. The Commission said:

"Upon full consideration of the facts of record we are of opinion that a reasonable maximum rate on this ex-river

coal would be 77 cents to Youngstown and points grouped therewith, including Warren, Ohio."

Examiner Curtis: That answers my inquiry. It says that, if you read it correctly.

Now, ask the witness the question.

(Narrative resumed.)

By Mr. Martin:

I can not concede the rate of 77 cents found to be reasonable there was found to be reasonable as a maximum rate. I will admit what the Commission says here.

[fol. 1231] I am asked whether that rate of 77 cents was not determined by the Commission as in its opinion a reasonable maximum rate. I think that is a correct statement.

I am asked to apply the same thing to the Slider scale, which is shown in column 6 of my Exhibit No. 117, and asked were not the rates prescribed in the so-called Slider scale also prescribed as reasonable maximum rates. (1390) I do not have the decision here, but if the decision reads that way I am perfectly willing to admit that.

(1392) By Mr. Martin:

Q. Mr. Carbine, the so-called Slider scale which you have shown on Exhibit No. 117 is based upon the scale fixed by the Commission in E. T. Slider vs. Baltimore & Ohio Railroad Company et al., 96 I. C. C. 65, is it not?

A. Yes. I do not have the decision here, but I have no doubt you have the decision before you.

Q. I will show it to you in just a moment.

In the last paragraph of that report the Commission states:

"We find that defendants' rates for the interstate transportation of bituminous coal, in carloads, when coming off the Ohio River from New Albany, Ind., to other points in Indiana on their respective lines are, and for the future will be, unreasonable to the extent that they exceed the rates per ton of 2000 pounds set forth in the following table for the respective distances shown: distance, reasonable maximum rate to apply," followed by certain mileages and figures.

Having heard that paragraph read, Mr. Carbine, would

you say that what the Commission was fixing in that case were reasonable maximum rates?

[fol. 1232] Mr. Orcutt: I object, Mr. Examiner. The decision speaks for itself.

Mr. Martin: If the witness says he does not know after hearing that read, I do not care to press him further.

Mr. Orcutt: The witness does not need to say he does not (1393) know, and what the witness knows or does not know does not bind the Commission.

Examiner Curtis: Did not the witness prepare an exhibit using rates prescribed by the Commission, for the purpose of comparing such rates with those here under suspension?

Isn't that so, Mr. Carbine?

The Witness: Yes, Mr. Examiner. But I cannot say as to what the Commission had in mind. Under other circumstances they might have other reasonable maximum rates. I cannot admit that they are reasonable maximum rates. I think the decisions themselves, or the wording of the decisions themselves, should be governing and not my opinion as to whether they did or did not. I don't know what the Commission had in mind the 77-cent rate from Colona and Conway.

Examiner Curtis: I think all you can do, then, Mr. Martin, is to ask him whether his exhibit does not purport to show a comparison of prescribed rates with those here proposed, and then you may inquire of him, if you wish to, if you think it right and proper, as to any expression of his opinion about circumstances and conditions within his knowledge bearing upon either of the two classes of rates.

[fol. 1233] (1395) By Mr. Martin:

My column 3 of Exhibit No. 117 is based upon 85 percent of the Holmes and Hallowell scale, which I stated was the percentage used by the Commission in American Rolling Mill Company et al. vs. the Baltimore & Ohio Railroad Company et al. 173 I. C. C. 357. You have read correctly the concluding paragraph of the Commission's report in that case reading:

"A rate of 80 cents from Cincinnati to Hamilton and Middletown would be approximately 85 percent of the Holmes and Hallowell scale, and we are of opinion that a

rate in that amount would be reasonable for the traffic under consideration. Accordingly we find that the rate assailed is, and for the future will be, unreasonable to the extent that it exceeds, or may exceed 80 cents per ton of 2000 pounds."

(1396) I am asked after hearing that read to state whether or not the Commission fixed that rate of 80 cents as a maximum reasonable rate.

(Mr. Orentt objects and after discussion, transcript pages 1396-1398, the following occurred.)

(1398) Examiner Curtis: The Examiner has not tried to be arbitrary, or anything of the kind. I believe we will save some time if we put it in.

(Narrative resumed.)

By Mr. Martin:

I am asked to look at my column 4 of Exhibit No. 117 and asked to repeat for the record how I arrived at the rates in that column.

[fol. 1234] It is purely a mathematical calculation. We took the lake cargo coal rate of $1.43 and then figured out what the rate would be from the Ohio No. 8 mines to Cleveland, as shown in our Exhibit No. 116, which was 133.4, but which, according to Mr. Martin's memorandum which he showed me yesterday, is 132.6, assuming that these mines have been abandoned, and figured the rate under the Holmes and Hallowell scale for that distance, which would make the rate $1.75, which is a (1399) difference of one cent in the Ohio No. 8 rate of $1.74. We then applied the $1.43 lake cargo rate to the $1.75, which is the Ohio No. 8 local rate under the Holmes and Hallowell scale distance and found it represented 82 percent of that rate. And we merely made these calculations upon that basis.

That is the $1.43 lake cargo rate, the rate which was prescribed by the Interstate Commerce Commission in Lake Cargo Coal Rates, 1925, 126 I. C. C. 309.

Q. And is that the rate that is referred to on the last page of the majority report in that case, namely, page 365, as follows:

"Upon further hearing we find that the rates assailed in Nos. 15007 and 15007 Sub.-No. 1 are, and for the future

will be, unreasonable to the extent that they exceed, or may exceed $1.46 per ton from the Pittsburgh district, and $1.43 from the Ohio No. 8 and Cambridge district."

A. Those were the rates the Commission fixed from those districts.

[fol. 1235] (1403) This rate of $1.43 was ordered in by the Commission by its order of May 9, 1927, in Docket 15007 and sub-number 1. (1404) I have no doubt you are reading the correct citation. I don't want to look for this. I will take your word for it.

(1408) My column 5, headed "77 cent rate progressed" is taken from my Exhibit No. 120.

By Examiner Curtis:

That is a computation taking a base rate of 77 cents and progressing it on a mileage basis.

By Mr. Martin:

I am asked to refer to my Exhibit 118 and particularly to line 4 of the heading, and asked what do the letters and figures "I. C. C. 69" mean. That was the Commission's decision in the Holmes and Hallowell case it was taken from.

I am handed volume 69 of the Interstate Commerce Commission's reports, opened to page 18, the last page of the report in Holmes and Hallowell Company vs. Great Northern Railway Company et al., 69 I. C. C. 11, and I am asked to look at the scale of rates shown under the heading "Maximum scales, Bituminous," appearing on page 18, and state whether that is identically the same scale which I have shown in my Exhibit 118.

Yes, that is the scale we have shown. I think the figures are identical throughout unless there was some typographical error in running this thing off.

This Holmes and Hallowell scale applies on coal moving to the head of the lakes originating in the Appalachain field, that is Pennsylvania, Ohio, Virginia, West Virginia, eastern Kentucky, moving to Lake Erie ports, then transshipped by water.

[fol. 1236] I don't know what the value of by-product coal is at the head of the lakes before it is moved on the Holmes & Hallowell scale of rates.

(1410) I have heard testimony In this record to the effect that the value of by-product coal f. o. b. mines in the Connellsville district is about $1.50, but I don't believe it is correct. (1411) I am asked for the purposes of this comparison, or calculation to state what in my opinion is the value of by-product coal at the mines in the Connellsville region. I don't know. I don't know what the value is, but I think that the value of $1.50 stated, from my contact with the coal operators, is a value that is rather understated. I can not give any figures from which I have drawn that conclusion, only my general knowledge of the situation. I can't say that $2.00 is too high. I think it all depends on the law of supply and demand as far as by-product coal is concerned. There is a limited area available, and what the price is or may be I wouldn't attempt to say. I am perfectly willing to assume that the value is $1.50 f. o. b. mines. I am asked to make a calculation, taking the value of the by-product coal, f. o. b. mines, $1.50 net ton. (1412) The lake cargo rate from the Connellsville district to the Lake Erie ports is $1.54 per net ton. The dumping charge at the Lake Erie ports is 8 cents per net ton. I can't give you any information as to the vessel charge from the Lake Erie ports to Duluth or Superior.

[fol. 1237] I am asked if I think 35 cents per net ton would be too high a vessel charge for that movement.

(Mr. Orcutt objects. After discussion, the following occurred:)

(1413) Examiner Curtis: It may be immaterial, because the rates you are proposing are to be applied on bituminous coal, regardless of whether it is by-product, steam or gas coal. This rate will move all kinds of coal, anything that is offered under that rate. But this witness says he does not know anything about the cost of moving the coal by water on the lake after it leaves the Lake Erie ports up as far as Duluth or Superior. I am kind of curious to know why he doesn't know something about it.

The Witness: Well, I would like to explain that. These rates that are made for moving coal from the lower lake ports to the head of the lakes are, of course, contract rates. In many (1414) instances they are termed outside rates or spot rates, and they vary. I have, of course, a knowledge of a great many of the things to which you refer—values

of coal, boat rates, barge rates on the Ohio River, and so forth, but Mr. Martin is attempting to take me through a calculation here that I don't know what the ultimate aim is and I can't give him accurate rates. As to what the actual rates are, they are contract rates, sure. They would be within a certain range, probably from 30 cents to 40 cents.

By Mr. Martin:

Q. All right; I will take the range. That is all I want.

A. Rates are extremely low on the rates for moving coal by water at the present time.

[fol. 1238] (Narrative resumed.)

(1415) By Mr. Martin:

I would say that the range of charges for the movement by vessel from the lower Lake ports to the head of the lakes at Duluth and Superior would probably range from 30 to 45 cents per ton. Mr. Martin I am perfectly willing to testify to anything that I know is absolutely correct and accurate, and I am willing to give the range there, because I have a pretty good knowledge of what those things are. As I say, they are very variable quantities, as you realize, depending on (1416) the amount of tonnage that is offered and that sort of thing. And the people that employ these boats do not like to disclose exactly what they are paying. It is common knowledge as to what the boat rates are. There is no secret as to what the range may be.

I am asked to assume a figure which is the minimum figure I gave, or 30 cents a ton for the vessel charge to the head of the lake, and add that in. I will accept 15 cents per net ton for the transfer charge to the head of the lake for the purpose of this calculation. I don't know off hand what it is. I will add that in the resultant figure is $3.57 per net ton.

I do not know sufficient enough about the re-screening plants at the head of the lakes for re-screening coal moved in those vessels to testify to it. (1417)

There are plants there for screening, yes. The plants that are there, of course, are for the purpose of re-screening coal which moves up to the head of the lakes in those vessels, particularly, I should think on the Pocahontas

coal used for domestic use, or other coals used for domestic use.

[fol. 1239] That is for the purpose of removing slack coal and fine coal that has been created by the degradation involved in the rail and water movement, and that rescreening service is given to some of the coal at least that is handled over those docks.

I haven't examined, in connection with these Holmes and Hallowell scale exhibits, the question of the comparative rate level in the Holmes & Hallowell territory with the rate level in Ohio. I couldn't state whether it is higher than the rate level prevailing in Central Freight Association territory without making a thorough investigation of it.

(1418) I am asked if as a result of my 22 years traffic experience, that that rate level in the northwest, as we may call the Holmes & Hallowell territory is substantially higher than the rate level prevailing in central freight association territory. As a result of my 22 years experience, and I have testified in a great number of cases, it is not my custom to testify with regard to facts I do not know, and I do not hesitate to say so when I don't know. If there is any question about what the facts are, let us find out what they are. Don't ask me to state them.

I did not in connection with the preparation of these exhibits make any comparison between the traffic density in the Holmes & Hallowell territory and the traffic density in the central freight association territory, or in the portion of the central freight association territory which is covered by the proposed ex-river rates.

I can not give you any specific information on that question.

(1419) I read the decision of the Commission in the American Rolling Mill Case, 173 I. C. C. 362, reading:

[fol. 1240] "We have frequently used the Holmes & Hallowell scale as a convenient means of comparison, bearing in mind that it was prescribed for application on coal from beyond the head of the lakes and in a territory in which the level of rates generally is substantially higher and the traffic less dense than in central territory."

I was familiar with it prior to the submission of these exhibits relating to the Holmes & Hallowell scale.

My Exhibit 119 presents a series of calculations or calculated rates for mileage blocks on the basis of 85 per cent of the Holmes & Hallowell maximum bituminous scale. I believe that that is correct that it has been used as the basis for carrying the figures forward to column 3 on my Exhibit No. 117. (1420)

Exhibit No. 119 was built upon the basis of the percentage of the Holmes & Hallowell scale ordered in by the Commission in American Rolling Mill Company et al. v. Baltimore & Ohio Railroad Company et al. 173 I. C. C. 357. I have seen the order in that case requiring the establishment of a rate which shall not exceed 80 cents per ton of 2000 pounds from Cincinnati to Hamilton and Middletown, Ohio.

I am referred to my Exhibit No. 120, headed "Exhibit showing the Holmes & Hallowell scale of progression on a base rate of 77 cents for the 40 to 50 mile block.

You are not correct in understanding that that progression was arrived at in this manner. That I found the 40 to 50 mile block in the Holmes & Hallowell maximum bituminous scale to be $1.02 and subtracted from it the figure of 77 cents referred to by the Commission in the Colona-Con- [fol. 1241] way case, and then finding the difference to be 25 cents, deducted that 25 cents difference from all the other rates in the Holmes & Hallowell maximum bituminous scale. (1421) That is not the way I did it. I am asked to explain how I did do it. What we did, Mr. Martin was to take the 77 cent rate which the Commission suggested in the Colona-Conway case to Youngstown for a distance of 40 to 50 miles, and use that as a base and progressed it on a mileage basis in accordance with the mileage rate of progression in the Holmes & Hallowell scale for the blocks beyond the 40-50 mile blocks. For example, in the Holmes & Hallowell scale for 40 to 50 miles the rate is $1.02 per net ton; for 50 to 60 miles, it is $1.11 per net ton, or 9 cents higher. We took the 77 cents for the 40 to 50 mile blocks and added an additional nine cents for the next block and followed the same procedure throughout the progression of the scale.

I have the Holmes & Hallowell maximum bituminous scale before me in my Exhibit 118. (1422) The figure for the block 625 miles to 650 miles shown in Exhibit 118 is $4.68. It is $4.43 in No. 120 a difference is 25 cents.

I am willing to admit that there is a same difference of 25 cents in the next to the last block without going through all this figuring. I told you how we did it. It may work out the same way when you get into the higher blocks, but that is the way we did it. I don't know how far back that difference of 25 cents extends.

(1423) 75.5 per cent is the percentage of 77 cents taken by me in Exhibit 120 for the 40 to 50 mile block of the $1.02 rate shown in Exhibit No. 118 for the same block.

[fol. 1242] I am asked to state the corresponding percentage for the 80 to 90 mile block.

Mr. Fitzgerald: I think it is pure mathematics.

Mr. Martin: It is mathematics with a purpose.

Mr. Orcutt: We will admit that the percentage changes from one rate to another.

Mr. Martin: Well, it changes, but it changes in a way that seems remarkable. It always increases, according to the calculations I have made. I haven't made them all, but I have taken (1424) the calculations for the 80 to 90 mile block, which includes the Canton and Massillon mileage, and I have taken the block 140 to 150 miles, which includes the Cleveland and Lorain mileage and both of those are substanti-lly higher on a percentage basis than the forty to fifty mile block, which is the Colona-Conway to Youngstown block; and that percentage increases throughout apparently until it reached almost 95 per cent for the highest block, with the result that the progression method adopted by Mr. Carbine has pushed this 75.5 per cent scale for the low block, Colona and Conway, up to 95 per cent in the highest block.

Mr. Orcutt: Well, in Exhibit 119 the scale is made on percentages. Can't you show it on that?

Mr. Martin: Exhibit 119, Mr. Examiner, is made just like the Commission always applies the Holmes & Hallowell scale. They apply the same percentage, 85 per cent, we will say, throughout the scale, but Mr. Carbine's method of progression is radically different from the Commission's [fol. 1243] method, as I expect to show in just a moment.

Examiner Curtis: Let the examiner state that by one il-

lustration. Under your method and under his there is a difference——

The Witness: In that connection may I state, Mr. Examiner, there is nothing to indicate in the Conway-Colona case that the Commission fixed and rate there with any percentage (1425) relationship to the Holmes & Hallowell scale. They fixed a base rate which they said should be used on some progression. It has to be used on some mileage progression, whether a five mile block or a ten mile block. You have to start somewhere. That is the reason we used this as a base. It is perfectly obvious it is going to result in a different percentage of the Holmes & Hallowell scale as you go along.

Examiner Curtis: I say let us approach it from that angle and see what the rate to Cleveland would be. If you make it 75.5 per cent of the Holmes & Hallowell scale for the distance between Mingo Junction and Cleveland over the rails of the Wheeling & Lake Erie, what will you get there? (1426)

(Narrative resumed.)

The distance is 154 miles from Mingo Junction, and on the Holmes & Hallowell scale the rate would be $1.90. 75.5 per cent of that would be $1.43. Under my method I figured it to be $1.65; under the 77 cent rate progressed.

(1428) By Mr. Martin:

Q. Mr. Carbine, before the noon recess we had been told by you that the rate of 77 cents per ton shown on your Exhibit 120 for the mileage block of 50 miles and over 40 con- [fol. 1244] stituted 75,5 per cent of the rate for the same block shown in the Holmes & Hallowell maximum bituminous coal scale. Now I want to ask you to make similar calculations for a few other representative blocks. Will you please state what the rate in the Holmes & Hallowell maximum bituminous scale for the block of 90 miles and over 80 is, as shown by your Exhibit 118?

A. $1.36.

(Narrative resumed.)

The rate I have used in the same block in my scale of progression on Exhibit 120 is $1.11. $1.11 is 80 per cent

plus of $1.36. (1429) I know of no instance where the Commission has worked out the Holmes & Hallowell and applied to it the method of progression I have used in Exhibit 120. As stated, we took the 77 cents as the base rate and applied the mileage progression to it and used that mileage progression that the Commission used in the Holmes & Hallowell case for that purpose.

In the American Rolling Mill case upon which my Exhibit 119 is based, they apparently applied 85 per cent of the scale to get at that rate to Hamilton and Middletown. They made no such progression as I have made in Exhibit 120. (1430) But, of course, I have shown both of them in my Exhibit 117. That exhibit showed what the resultant rates were. For instance, to Cleveland, under the 85 per cent it was $1.55; on the 77 cent rate progressed it was $1.57. [fol. 1245] I have made no other calculation other than what I have made for you. I have not set up any table on the 75.5 per cent basis of the Holmes & Hallowell scale, similar to my Exhibit 119, nor have I based on 85 per cent.

The scale in the fourth line of the heading of my Exhibit 121 96 I. C. C. 65, was fixed in the early part of 1925. (1431) I have made no investigation as to the movement under that scale during the period from 1926 to 1930 inclusive. I do not know anything about the movement. I presume it appears in the reports of the Ohio Bureau of Coal statistics. I can't say positively. Those reports are available to me. As to whether they have been used by the protestants rather freely in preparing their exhibits, yes. Not by me. By Mr. Kern. I don't believed he showed these changes. I don't know whether he did or not. I don't believe he did. I understand that the Slider scale moves tonnage, but as to just what it moves I don't know. The figures can be very readily secured. I would be surprised to learn that during that five year period, 1926 to 1930, only 90 tons moved under that scale. Nevertheless, this (1432) was the basis of rates which the Commission provided for movement of ex-river coal from New Albany, Indiana to destinations in Indiana.

In preparing this exhibit and studying the Slider scale, I did not take into account the difficult operating conditions, particularly on the lines of the Southern Railroad which were involved in the fixing of our Slider scale rate. I have no personal knowledge of those conditions. I had

before me the American Rolling Mill decision which was read in connection with my Exhibit 119. I am asked to turn to page 362 of that report.

[fol. 1246] By Mr. Martin:

Q. It says: "In Slider vs. B. & O. rates on ex-river coal from New Albany, Indiana, to other points in (1434) that state were found unreasonable and a maximum scale of rates was prescribed. Under that scale a rate of 87.5 cents applied for distances of fifty miles and over 30 miles. The measure of that scale was affected by different operating conditions on the lines of the Southern out of New Albany."

You were familiar with that statement, were you not, in the commission's decision in the American Rolling Mill case?

A. No, I can't say that I paid any attention to it. I read the decision when it came out, but I can't say that I paid any particular attention to that.

(Narrative resumed.)

I did not read it again about the time I prepared my exhibit 119 in connection with this case. I didn't go into what the Commission's findings were. I accepted the 85 per cent. I don't know whether the statements made here are correct or not. They may not be.

I have not looked into any other transportation conditions relating to this movement under the Slider scale. For example, the average loading of cars moving under those rates.

I am asked to turn to my Exhibit No. 122 and asked (1435) in this case, in some contradistinction to the testing of the ex-river distances I have used short line mileages throughout. That was the purpose unless there was some mistake made. These are distances over the Pennsylvania Railroad, publishing the rates.

[fol. 1247] I think Mr. Davis' report will show what movement there is into the Ohio destinations. Whether it shows them separately or not, I don't know.

In preparing this exhibit I did not go into the question of whether or not there was any movement under any of these rates at any time. I know there is a movement into Ohio destinations. As to whether it is to these specific points I can not say. But I did prepare an exhibit which

would show the level of the rates into Ohio destinations. I can't say off hand whether they move any traffic. I can not state the population of the first point, Goes, Ohio, or Oakview, or any of the points off hand. If you are interested in that I can get the information.

[fol. 1248] (1438) If I had the tariff I could give you information as to the Inner Crescent rate to the group taking the $1.89 ex-river rate from Cincinnati, but unfortunately I don't have the tariff. I believe it would be $2.39 to all of these destinations.

Q. Assuming for the purpose of my question that it is $2.39, subject to correction later, if a man, for example, at Heath, Ohio, the next to the last point at the bottom, were seeking to secure the lowest transportation charges on Inner Crescent coal, would he be able to make any saving by using this ex-river rate on any Inner Crescent coal that you can think of?

A. He might not be; probably would not be. He might not make any saving, Mr. Martin, but there is very little coal that moves up there. It would come down the Ohio River to Cincinnati, and some of it moves in locally and some is shipped out of the territory by operators and whether he could make a saving would depend on the price.

Q. I am not talking about that. I am talking about the transportation charges and assuming a fixed price.

A. I don't think there would be any saving on it.

(1439) (Narrative resumed.)

He would be able to secure an all-rail movement of this coal from the Inner Crescent to Heath, Ohio, for $2.39, I think that is the correct figure. If he chose to use the ex-river rate from Cincinnati he would have to pay our company $2.02 for moving the coal from Cincinnati to Heath, plus the lifting charge, plus the water rate for getting it to Cincinnati, and if we add an assumed lifting [fol. 1249] charge of 12 cents to the $2.02 ex-river rate we have $2.14 and we would have only 25 cents left to pay for the water haul.

I am asked what is the nearest Inner Crescent coal that I know of to Cincinnati, by river. By river it would be at some point on the Kanawha River. I don't know that it is 200 miles away. It is a considerable distance from Cincinnati by water.

(1440) Those points shown on my Exhibit 122 are points in Ohio that are on our Cincinnati division running east and north from Cincinnati and would be therefore east or south of the gas belt. How far east or south of the gas belt these points would be I couldn't say off hand. The mileages are shown from Cincinnati to these destinations. The mileage from Cincinnati to the gas belt in the reverse direction is 80 some odd miles, the average.

I am asked if it would be fair, then, in figuring the distances of these points from the gas belt to add approximately 80 miles to the miles shown: If you come back to Cincinnati to certain of these destinations. I can not at the moment give you any more accurate way of figuring them.

I do not know the value of the coal that moves under the scale prescribed in State of Connecticut vs. New York, New Haven & Hartford Railroad Company, 161 I. C. C. 211.

(1441) I think at the present time, a large part of that coal is mined in southern West Virginia, or eastern Kentucky. Part of it in Maryland and Pennsylvania.

[fol. 1250] The rail charges on the movement of this coal from the low volatile fields would be $2.52 to Hampton Roads. The dumping charge is five cents a ton, but that is included in the boat. The boat freight always includes the dumping charge. The boat rates vary but they will range from 60 to 75 cents per ton to a typical port on the New Haven railroad. Using the 60 cents as the minimum, I can't say what is the lifting charge at the private docks, but the published rate or charge of the Boston & Maine or New Haven, as I recall it is 35 cents a ton.

Taking that figure, I am asked what would be the value of this low volatile coal at the mine. (1442) I can't say. There is a pretty wide variation in that. Some of it would be less than $2 a ton. Some of it would be less than $1.50 per ton. I would say that it would range somewhere between $1.25 to $2.25. I don't doubt that $1.50 is pretty near being the minimum. Much of it is sold spot down there, and it was sold as low as 35 cents within the past six months.

Q. I have a vaule of the coal at the New England port made up as follows: Value of the coal at the mine, $1.50; rail haul, $2.52 vessel and dumping charge, 60 cents, lifting

charge 35 cents, or a total of $4.97. Do you think that is a fair value for coal at the port in New England?

A. Oh, I think it is the approximate value. I haven't any accurate figures on it.

(Narrative resumed.)

Of course, it is substantially higher than the value of by-product coal at the mines in the Connellsville region.

[fol. 1251] (1443) I have looked into the question of the transportation conditions under which coal is moved under this scale shown in my Exhibit 123 in a general way. I can't attempt to tell you anything about the operating conditions. I know it moves in open top equipment from the ports to the interior destinations. I can't give you the average haul under this scale. I can't say that I have studied in connection with the preparation of this exhibit, the report of the commission in this case, Docket 21121 reported in 161 I. C. C. 211. I knew of the report. I may have read it, but I don't recall at the moment. I read these decisions as they come out, but I don't remember what is in them.

I don't recall that the Commission stated that the average haul on this coal is less than 50 miles. I think I pointed out and explained to the examiner that a large part of the population of New England was within about fifty miles of the coast, and that is where the largest consumption is. I stated that when I (1444) put it in the record.

As to whether this is widely diffused traffic. I don't know just the sense you mean. It goes to a number of destinations, if that is what you mean, yes. The bulk of it is handled to main line points like Springfield, Lowell, large consuming points. There is some, of course, that goes to branch line points, just like on other railroads, but our large tonnage is to main line points.

I don't recall the statement in the Commission's decision, or (1445) that the New Haven handled this coal from nine ports and that the destinations to which it was delivered from each port ranged from 14 to 116 consuming points, 85 percent of which moved to branch line points.

[fol. 1252] I don't recall the statement in the decision that the average miles per car per day for the transportation of tidewater coal was 6.7 as compared with 19.4 for the entire system, or that the original or final terminal service was performed for every 17 loaded car miles as compared with

similar service for all traffic for every 118 car miles and that the movement is irregular on account of the irregular arrival of vessels. I made no analysis between conditions obtaining in New England relating to the movement of coal on the New York, New Haven & Hartford, with conditions obtaining in Central Freight Association territory. I know in a general way what the conditions are. I have been in divisional cases with the New England lines. I have been in cases in Central Freight Association territory.

(1446) I am asked to give a comparison between the transportation conditions obtaining on the movement of this ex-tide coal under the scale shown on 123 and the transportation conditions obtaining on the ex-river coal under the proposed rates.

I can only do that in a general way. I can say the coal moves in open top cars, is transported by locomotives. I know that the New England roads are quite efficient roads today and have been for some time. I know what the conditions are in Central Freight Association territory and Trunk Line territory. In a great many instances we have the same things confronting us that they have there. They have no exceptional conditions as to the delivery of freight that we do not have. On any rate that we make it doesn't make any difference whether one carload or a thousand [fol. 1253] carloads move, we have to perform the same terminal service the same as they do. It is — question of how far you are going to go with a thing like that. I don't see any great difference just because it happens to be up in New England over what there would be if it happened to be a movement from Pittsburgh to Cleveland or from Mingo Junction to Cleveland. You have your difficulties at Cleveland I assure you. I know about those.

I am asked whether I found any similar situation in c. f. a. territory or in the territory to which the proposed ex-river rates will apply as to the grouping of population within fifty miles of the ports as I have in New England. Well, (1447) we had in the Colona-Conway case the contention that Youngstown is a very important point within fifty miles of those two points, and we have here a situation which involves rates not very greatly in excess of 50 miles, where I consider a very substantial part of the traffic will be delivered.

It is considerable enough for the protestants to claim that

hauls required are 154 miles, to the principal consuming points.

I am asked, if I found in connection with these ex-river rates, that there are any conditions similar to the secondary or branch line movements that have been referred to, described in the New Haven case. According to my understanding of the situation certainly the movement to Canton and Massillon may well be compared with branch line operations in New England. Canton is off the line running from River division points through to Toledo. That is your main line. That is the (1448) Cleveland division, which is presumable comparable to what you term branch line divisions in New England, which are extensions of their——

[fol. 1254] From my knowledge of your Cleveland division, I don't know whether it is a branch or not. I don't know what you term it.

I am asked whether New England territory is generally regarded as a high rated territory on commodities generally. I can't speak as to commodities generally. My time with the Pennsylvania Railroad has been devoted to coal, coke and iron ore, and I can only talk with respect to those commodities, and I will say it is not a high rated territory as compared with Eastern Trunk line territory.

I think as regarding the general level of rates on coal in Central Freight Association territory they are lower than in Eastern Trunk line and in New England, and there is very good reason for that, as we have testified before the Commission many times. We have got this water competition that has forced down the rates and the competition between these various fields. (1449) Coal produced in Pennsylvania to get to the destinations along the lake front has got to pass over, on at least some of the routes, coal produced in Ohio; coal from Fairmont has to pass over other coal fields further north, and the same thing is true of the West Virginia fields, and that intense competition between the fields, the various railroads serving them and water competition, in our opinion has forced the rates on coal in Central territory to an unduly low level.

In any event they are lower than the rates on coal in New England and lower than in Eastern Trunk line territory. The rates today are, in my opinion, on an extremely low basis.

I am referred to my Exhibit No. 125, and asked if I can

give any specific information as to the movement of bituminous coal on any of these rates.

[fol. 1255] I haven't any information here, Mr. Martin, other than the information that I have shown. The totals on Exhibit 126 are just the totals from the ports to the interior. I merely showed that for the purpose of indicating that this coal did move from the New England port cities to the interior, and it (1450) was information I had in connection with another proceeding.

I can't separate it as to the destination. I can not give you any information as to the population of any of these points. Undoubtedly I have included in my list a great many points which are very small, but we have also, I feel sure, included some very important consuming points. At least that was the purpose of the exhibit. All of these points are well beyond the zone of fifty miles, within which the principal movement of ex-tidewater coal occurs and may I say that we did that for the purpose of trying to get a comparison of distance with yours to match them up to show there were rates actually published specifically in accordance with this scale that I submitted in Exhibit 124. That was the purpose of that exhibit.

As to whether there is any movement under any of these rates, (1451) I can't tell you as to that. That is not information I have in my possession. I can not give you similar information as to the three preceding years, 1926, 1927 and 1928, as shown on my Exhibit No. 126 movements via the New Haven, the Boston & Maine, and the Boston & Albany Railroads of bituminous coal from New England tidewater points to interior destinations taking all of the destinations apparently together.

[fol. 1256] (1452) According to this summary of the New England coal situation prepared by the Special Commission on the Necessaries of Life, Boston, Mass., the reshipment of bituminous coal by rail, both domestic and foreign to interior destinations for the coal year ending March 31, 1927, was 4,079,600 tons; for the coal year ending March 31, 1928, 4,041,957 tons; for the coal year ending March 31, 1929, 3,460,020 tons.

All of those figures are substantially in excess of the figures I have shown on my Exhibit 126, but they include the Central of Vermont, Maine Central and many other roads—the Canadian National, while these figures are only

for these three lines. I can not split those other lines out of my Exhibit 23 in the Colona case. I am asked if I can give those figures for 1926, 1927 and 1928, prepared in the same way as in my Exhibit 126, so that they can make a comparison for the five year period. If I can secure them I will be glad to do it for those three lines, you have here.

(1453) Mr. Orcutt: We will agree that if he wants to write and get the information he can put it in. We don't care to prepare what he thinks is his rebutal testimony. We have got other things to do. We have spent three weeks here now.

Mr. Martin: All right. That is a rather jug-handled agreement but we will proceed.

(Narrative resumed.)

I can't split this information on No. 126 up into the amount of coal delivered in the zone below (1454) 50 miles, in the zone from 50 to 80 miles, in the zone from 80 to 90 miles and in the zone from 140 to 150 miles. I thought perhaps there was something in the Commission's decision, but [fol. 1257] I don't have the information here.

I am referred to my Exhibit 127. This exhibit shows a scale of rates on lignite which is prescribed by the Commission in 142 I. C. C. 545, Alberta Sales Company vs. Canadian National Railways. This is coal from Canada that moves to points in the United States. I don't have the average loading per car of that coal. I have the decision in the Alberta Coal Company case before me. I find the statement that the average loading is shown at 33.4 tons.

(1455) I am asked if I made an investigation to determine to what extent the movement of this coal is over branch lines. My investigation, or the only thing I have here are certain excerpts from the finding that I don't mind reacing in here unless there is some objection to it on your part. It deals in a way with this situation. This is from the Commission's decision.

I am asked if I looked into the question of the traffic density in this territory to which these rates apply, as compared with the traffic density in central freight association territory. I have a paragraph here from the report on pages 546 and 547 which I will be glad to read.

"In the Holmes & Hallowell case, on the other hand, while

dealing with higher grade coals, bituminous and anthracite, we projected scales which took into account the fact that shorter hauls were in a territory of denser population and tonnage and that the longer hauls reached into a territory of relatively sparse population small tonnage.

[fol. 1258] (1456) Therefore while we are persuaded by the record that the rates here in question are on an unreasonably high level we are of the opinion that neither the North Dakota lignite or the Holmes & Hallowell scale represents an appropriate measure of reasonable rates for application to hauls primarily and principally in a territory of relatively light tonnage, and are of the opinion that the scale should begin on a somewhat higher level than the Holmes & Hallowell scale and grade down to its level at 500 miles."

I am asked if the value of this lignite from Canada shown on page 546 is about $4.20 to $5.50 per ton at the mines. (1457) I don't know whether those prices are right.

Examiner Curtis: I think it would be ample if the witness knows, on account of his general experience, whether lignite coal is or is not an entirely different commodity than ordinary bituminous coal such as we have here under consideration.

Mr. Martin: I would be very glad if he could state that from his knowledge, and particularly as to the value of Canadian lignite which is the traffic and the only traffic which can move under these rates.

The Witness: Well, ordinarily, of course, I know that the term lignite is applied to a coal that is not as valuable generally as other bituminous coal, but there is always a lot of contention as to what is lignite and what is bituminous coal. The Commission does refer to it in its decision here.

[fol. 1259] (1458) In the North Dakota case involving these rates on Alberta coal there was some contention, as I understand it, as to whether the coal was lignite or bituminous coal. This Alberta coal is a very friable coal. If it is shipped long distances it disintegrates. That same thing is true of lignite coal. In Canada Alberta coal is known and advertised and sold as bituminous coal. These lignite coals of the far west are really more friable, and they are not suitable for the same purposes as other coals. They load lighter, I should say, generally speaking, than the average bituminous coal.

I could not say that this Canadian coal covered by these rates is of a better quality than the North Dakota lignite. I say there is a contention of that kind. I think Mr. Hoffacker is better qualified to testify to that than I am, because I don't pretend to be an expert on the quality of coals.

I did not look into that question in connection with the preparation of my Exhibit 127. (1459) I merely offer that as a scale of rates the Commission had fixed on coal. I did not look into the question of the relative traffic density in that territory and in C. F. A. territory. I am asked if I looked into the question of whether or not that territory is a higher rated territory than central freight association territory on commodities generally. I couldn't say that it was on commodities generally. I really couldn't say as to coal. That is pretty far away from our fields, and I am not as familiar with those rates as I am with rates in the eastern territory.

I made no investigation of that in connection with that exhibit.

[fol. 1260] (1461) I do not know of any way in which these proposed ex-river rates could be restricted. (1462) I am asked to refer to my Exhibit 128, where I have shown a number of rates, apparently point to point rates. I am asked if these are point to point rates. A great many of them are. Some are shown as district rates. For instance, Crooksville district to Columbus, and the Hocking district to Columbus. In other words, it is just a representation of the rates more or less locally in that territory, not confined to point to point rates. I am asked if except in those cases where I have shown rates applying from an origin district that all of the other rates are point to point rates. Oh, no. Some of them may just be representative points in the district.

I am asked to take some of these representative points in the district, for example, Adena, Ohio, to Wellington, Ohio, 106 miles, $1.74. It is apparently true that the rate from Clarkson, Ohio, to Huron, Ohio, from the same district is the same rate for 154 miles. I have shown a rate from Martins Ferry to Cleveland of $1.74 for 134.4 miles. The rate is the same from Martins Ferry to Huron, $1.74. I do not know what the mileage is to Huron. I would not doubt that it is approximately 162 miles.

(1464) I do not know what the distance from Smithfield to Erie, Pa., is. I do not know the distance from Piney Fork, one of the origins I have used to Painesville, Ohio, or

Genova, Ohio. You have Painesville and Genova also there. It shows the distances, but I don't know for comparative purposes the mileages from Smithfield to Erie, Pa.

[fol. 1261] I can not give you the movement specifically from any of these points or districts to any of the destinations shown on this exhibit. I might explain why. We have taken these and worked them up, under my direction, to get representative movements, and we didn't feel justified in going to the expense of (1465) going over the way-bills. We dont keep those tonnages separately. We have to go over the way-bills to get them. This is merely a picture of the rates in the territory, and we believe they do represent a fair picture of them.

I have no information shown here as to what the movement is under any specific rate, or population of the town. I might say in that connection, Mr. Martin, so that the record may show it, that that is a very misleading thing, population. We have one of the largest consuming plants in our Philadelphia territory, called Swedeland, where the Alan Wood Iron & Steel Company have a large plant. There is nothing around the plant but a lot of shanties where those people that work around the steel mills live. I suppose there is a population of three or four hundred people in the whole place, and yet it consumes in good times almost a million tons of coal a year. So that I have always contended that population does not represent the possibility of fuel consumption or coal consumption. That has been my experience with it, because you generally find some of these towns where there are large industries with a very small population shown in the town. People may live across the river ten miles and drive over. That is a true statement of the conditions around industrial plants. (1466)

[fol. 1262] These rates that are shown here on Exhibit 128 cover assembling service at the mines as well as the line haul and delivery service. I am not able specifically to give you a description of any of the conditions relating to the assembly service at any of the mines shown at these points of origin, but the general practice is to place cars at the mines.

As to whether the mines at these points are on the main line or branch line and how far they are from the assembly yards, I am not prepared to go into those operating conditions. I am not familiar with the physical condition sur-

rounding the mines at these points of origin. I can treat them as a district as a whole, as a general situation. I wouldn't want to take up each case and show what the situation is. I know what is the situation throughout the territory.

I did not make any inquiry of the Wheeling & Lake Erie as to movements under those rates from Wheeling & Lake Erie or Pittsburgh and West Virginia points.

(1467) I am referred to my Exhibit 129, a list of iron and steel company by-product coke plants and commercial or gas plants. I am asked to state whether or not the following plants which are named have at the present time opportunity to use the transportation on the Ohio River or its tributaries, Ashland By-Product Coke Company at Ashland. Ky. I don't understand they use the river at all. I am not just clear as to the location of it. I have a map here which shows it Exhibit 130. It shows the location of all these plants.

[fol. 1263] (1468) I don't understand that they take any coal from the river at all. I think they are back from the river. That is my understanding.

The Davison Coke & Iron Company, at Neville Island, can and do receive coal from the River. The Ironton By-Product Coke Company. I don't understand they receive any coal from the river at all. I am not sure that they have any facilities for that purpose. I have no definite knowledge on that point.

The Jones & Laughlin Steel Corporation at Pittsburgh are on the water and do receive coal from the river. Their plant at Aliquippa is on the water and receive- coal by water. But I might say this: that those plants you have mentioned also receive coal by rail. Both at Neville Island and Aliquippa, Jones & Laughlin receive coal by rail.

(1469) The high volatile coal is practically always moved by water to these plants. The Pittsburgh Crucible Steel Company at Midland, Pa., receives coal by water. So far as I know the Portsmouth By-Product Coke Company at Portsmouth, Ohio, do not. I can't answer that absolutely. The Weirton Steel Company at Weirton, W. Va., receives coal both by water at 31 cents a ton maximum, and also receives coal by rail.

As to the Wheeling Steel Corporation at East Steubenville, W. Va. I can't say at East Steubenville. Follansbee

is the point where the by-product plant is located. It is the same thing as is here described as East Steubenville. [fol. 1264] The Carnegie Steel Company at Clairton, Pa., receives both by water and by rail. Where I have referred to water in answering these questions I mean the Ohio River or one of its tributaries.

[fol. 1265] (1470) I am asked to go over the exhibit in the same way and indicate whether the following plants will have the benefit of the 77 cent ex-river rate to Youngstown when established. Republic Steel Corporation at Warren, Ohio. I don't know.

I don't understand that the order or finding in that case states that the Commission finds 77 cents as the maximum reasonable rate to apply to Youngstown district, including Warren, Ohio. I don't so understand it that the rate published by the carriers applied to Youngstown. We have no order in this case, but we have told the Commission that if and when the people at Youngstown were ready to use it we would publish the rate and install facilities and we have spent some money there on the river, but there is no moral obligation, really, on us at all, or any obligation, to extend that rate to Youngstown. Just what we will do we have not determined on, and I am not in a position to say here.

(1471) As to the Republic Iron — Steel Company at Youngstown, if and when the rate is published to Youngstown it would apply to them, and the same answer would apply to the Youngstown Sheet & Tube Company at Youngstown, Ohio, shown on the exhibit.

On my Exhibit 130 I show along the Monongahela River and the Ohio River down to the vicinity of Ashland, Kentucky, these various iron and steel plants and blast furnaces concerning which I have just been interrogated, and in a group in the vicinity of Youngstown appear the blast furnaces and coke plants which, generally speaking, will enjoy (1472) the 77 cent ex-river rate when established. That is to say, if and when the rate to Youngstown is established those right at Youngstown would have [fol. 1266] the benefit of that rate. I can, of course, go that far. But that is a very serious thing in itself, that matter, and we have in good faith endeavored to carry out our moral obligations and intend to. But it is a very serious matter with us.

I am referred to my Exhibit No. 131. The Jones and Laughlin Steel Corporation enjoy river transportation over the Ohio river or its tributaries for the movement of coal. To the plant of the American Bridge Company coal does not move by water, so far as I know, but they are on the water at Ambridge. Very little. They don't use much coal.

My impression is that the plant of the American Rolling Mill Company at Ashland is located back from the river and does not get its coal by river. The Carnegie Steel Company at Bellaire, Ohio, have no by-product coke plant there, and I don't know whether or not they use any coal there. I don't believe they do; at least, not very much. I don't believe that the Semet-Solvay Company at Benwood, W. Va., get coal by water, nor the Wheeling Steel Corporation at Benwood, W. Va., so far as I know. The Carnegie Steel Company at Clairton, Pa., get coal by water in very large quantities. The Wheeling Steel Corporation, at East Steubenville, do. I can't say as to Follansbee Brothers Company at Follansbee, W. Va., I don't believe they do. When I was investigating this situation not long ago, they didn't. I can't say at the moment, but I don't believe they do. The Marting Iron & Steel Company at Ironton do not so far as I know. I don't know that the Wheeling Steel Corporation at Martins Ferry receive any coal by water. I know of no coal that the National Tube Company at McKeesport, Pa., receive by water. It is my understanding that the coke they use there is made at Clairton and (1474) the coal goes into [fol. 1267] Clairton. That is true of most of their plants. I know very definitely that the Pressed Steel Car Company at McKees Rocks, Pa., does not receive coal by water. It is my understanding that neither of the others receive coal by water. The Pittsburgh Crucible Steel Company at Midland, Pa., did, and the Carnegie Steel Company at Mingo Junction receives at least coke by water from Clairton. The Pittsburgh Steel Company at Monessen, Pa., does not receive coal by water so far as I know. They make coke at another plant and ship it up by water. I have testified as to the Davis Coal & Iron Company at Neville Island, Pa. The Jones & Laughlin at Pittsburgh receives coal by water. So far as I know none of the others

do. I don't understand that the plant of the Carnegie Steel Company at South Duquesne do. They get their coal in through Clairton. The plants shown at Steubenville do not receive coal by water so far as I know, nor the plant at Toronto, of the Follansbee Brothers Company, so far as I know. There is no other plant at Toronto, Ohio, that receives coal by water so far as I know. The Weirton Steel Company at Weirton, W. Va., receives coal by water. The Wheeling Steel Corporation's by-product plant is at Follansbee, where they receive no coal by water. So far as I know, they do not. The water that I have been referring to in connection with this exhibit 131 is the Ohio River and its tributaries.

I am referred to my Exhibit 132. The term "deliveries" as used in this exhibit refers to industrial tracks. (1476) It does not attempt in any way to indicate actual deliveries on any one or more industrial tracks.

(fol. 1268) I am asked to state on the tracks of what railroads at Cleveland are located by-product coke ovens which would use by-product coal. On the Cuyahoga Valley Railway, the plant of the Otis Steel Company; on the Newburgh & South Shore Railway the plant of the American Steel & Wire Company; on the River Terminal Railway, the plant of the Corrigan-McKinney Company. They are the three large steel plants at Cleveland. The American Steel & Wire also has a plant, located on the joint tracks of the Pennsylvania and the New York Central. I know of no by-product coke oven plants located on the Baltimore & Ohio in Cleveland. I know of none on the Big Four, Erie, or on the Nickel Plate so far as I know.

I can't say off hand if there are any located on the Wheeling & Lake Erie on the direct lines, or whether any of these roads do have direct track connections with any of these plants I have referred to. According to my own knowledge they do not. The traffic would move through these terminal roads. I can not state how many consumers of coal, by-product or otherwise are included in this list of 1462 deliveries shown for Cleveland. I can not state any specific number of industries that use in excess of 500 cars of coal a year. I am asked to state mow many of these deliveries take as many as one car of coal a year. I would have to get the list to do that. I know there are a good many concerns up there that use quite a lot of coal.

There are a great many concerns shown in this list of deliveries that do not use any coal at all. Oil and gas plants, junk yards and the like.

[fol. 1269] (1478) This is not intended to show they are all coal consumers. This is merely a list of deliveries taken from our tariffs, where we show the industrial tracks. At least, we show reference to them in our tariffs.

It does not have any reference to the coal consumption or deliveries of coal in Cleveland, Massillon or Lorain. This is not intended to show the relative proportions of these coal deliveries by railroads or by cities.

I am referred to my exhibit No. 135, where I show in column No. 3 rates based on 57.45 percent of the Pittsburgh district rate as applicable to the destinations shown in column 1, and asked if I heard of any proposition on the part of the Wheeling & Lake Erie Railway Company to establish any ex-river rates except to the four points shown in the suspended tariff. No, but the base originally given for the rates to Cleveland and so forth was that percentage and we wanted to show how that would work out if we applied it to other points, such as Toledo, Detroit, etc. There is only one point I have taken that is local to the Wheeling & Lake Erie, except Toledo, (1479) to reach the other points shown on my exhibit, the Wheeling & Lake Erie would have to use the lines of these protestants or of other carriers. They would either have to have their concurrence or consent to the establishment of any such rates, or a commission finding of undue prejudice. The Commission, finding undue prejudice, could require them to establish these rates to other destinations, particularly where iron and steel plants are located. That would be the Commission's action.

[fol. 1270] Taking the rate to Detroit. I am not familiar with the fact that the lines beyond Toledo demand 34 per cent of the coal rates beyond Detroit in the Hocking district. I haven't those divisions.

I am referred to my Exhibit 137, on the question of the increase under General Order 28 not being applicable to the ore rates from Lake Erie ports. That was due to the fact that the Director General made the increase applicable on the rail rates on ore for the movement from the ranges to the upper lake ports. It was to enable the Director General to secure an increased revenue on substantially

all of the ore moving from the ranges. As to whether if he had made the increase in the ore moving from the lower lake ports he would not have received revenue from that moving to interior furnaces, presuming all of it was made on the lower. He could have (1481) divided it very well. But they wouldn't have gotten as much revenue, if that is what you mean.

(Mr. Orcutt objects to the reasons why the Director General did a certain thing.)

By Mr. Martin:

As to whether this is a fact that was known to all traffic men familiar with matters of that nature during that time, all I know is what actually occurred. Under General Order 28 the total increase was placed on the rates from the northwestern ranges to the docks. There was no increase whatsoever authorized on the rates from the lower lake ports to interior destinations. That is the fact.

[fol. 1271] I am referred to my Exhibit 117 and asked if my 82 percent (1482) of the Holmes & Hallowell scale basis was obtained by using the mileage from No. 8 to Cleveland as the basis for the application of our lake cargo rate percentage. That is to obtain the Holmes & Hallowell scale, yes, that is true. The mileage I used from No. 8 to Cleveland was 133.4. That is the average distance from the Wheeling & Lake Erie mines, but I said that was changed by the statement you showed me yesterday to 132.6. The lake cargo rate from the No. 8 district applies to several ports other than Cleveland, and perhaps to Erie and Ashtabula. It moves as far west at Toledo from certain mines, not all of them. It doesn't get to Conneaught. I know of no rate to Conneaught. It goes to Sandusky from the No. 8 district. (1483) I think you have the rate into Toledo, but you have no facilities there for dumping coal. I don't know what the average distance from No. 8 field to all these lake ports which are covered by the common rate. I am asked if I know what the average is, using my distances, to all the lake ports to which the rate applies, if they were substituted for the destinations I have used. You would have to get with that the average distance on all commercial coal to all group points along that area. I mean if you were going to get any relative figures. I don't

know what the situation would be on that kind of a basis.

Concerning the possibility of breaking down the rate structure, I am asked to name any rate or rate structure that has actually been broken down in my experience by the use of river and rail, water and rail, or rail and water transportation. I think the lake cargo coal would be in that category. I think it did break down the rate structure. As to what rate structure, the lake cargo coal.

[fol. 1272] (1484) That is a rail and water structure in itself. The structure broke itself down. As to whether it did not have any effect on any commercial rates, it hasn't broken them yet, Mr. Martin, but it is a very, very serious menace to them, and something has got to be done about it one way or another very shortly. The carriers are losing millions of dollars because of the diversion of their all rail coal to the rail and water routes. That thing cannot be kept up indefinitely, it is growing more serious every year, but this lake cargo case has been in a state of litigation almost continuously for in the first reduction that was made of twenty cents in the northern rates, which was followed by a reduction in the southern rates, rates in the southern fields, and that thing went all through the courts. While it was in the courts this compromise adjustment was made to try to prevent a continuance of the disastrous rate war, and the matter has now gotten back before the commission on complaints of the Pittsburgh and Ohio operators who want an adjudication of the question as to whether the differential now in existence is proper or not, and as soon as that is out of the way something has got to be done about this situation.

(1485) As to whether there has been no actual breakdown in the commercial rate structure, there has been no actual rates filed, Mr. Martin, but we have, for example, before the traffic executives a proposition to reduce the rate to Buffalo. We have other things before us. For instance, the rate to Chicago. The all rail business in the south, the large consumers in Chicago, are taking all their coal by [fol. 1273] rail and lake. There has been actually no change that I know of in the commercial structure up to this date.

Mr. Fitzpatrick: The other day, Mr. Examiner, when Mr. Clark (1486) was on the stand, we gave information as to the empty equipment, freight equipment, and also the idle

freight locomotives on the Baltimore & Ohio during certain dates of 1929, 1930 and 1931. I asked them for the privilege to show in addition like information for other dates during those same years. I have had prepared a composite statement which includes the information given by Mr. Clark, and also that for the additional dates about which I spoke, and I would like to offer that as an exhibit at this time.

(Protestants' Exhibit No. 140, Witness Clark, received in evidence.)

(1487) Examiner Curtis: Now I believe that subject to the furnishing of certain information I held in abeyance a ruling on your Exhibit 116.

Mr. Orcutt: That is true.

Examiner Curtis: Don't let me forget it.

Mr. Martin: Mr. Examiner, we have secured from Mr. Kern, according to his promise, a number of extra copies of Exhibit 112, which was a copy of Mr. Kern's Exhibit 162 in I. C. C. Dockets 23240 and 23241. I will now hand an extra copy to the examiner, and here are six copies for the protestants which I will hand to Mr. Orcutt to be distributed as seems best.

[fol. 1274] B. F. Hoffacker was thereupon called as a witness for and in behalf of the respondents and having been previously sworn, testified further as follows:

Redirect examination.

By Mr. Martin:

I have testified heretofore in this case, and I have attended the hearings in this proceeding since about September 10. (1488) I heard Mr. Roy Kern testify in this proceeding. I received and examined his exhibits 95 to 99, both inclusive. I heard his testimony concerning those particular exhibits. I heard his testimony concerning Exhibit No. 112. I have examiner Exhibit 112 in connection with Exhibits 95 to 99, both inclusive. As a result of that examination I have endeavored to make an analysis to show the correct number of active mines as of the present date in the Pittsburgh, Connellsville and Fairmont districts. In

my opinion I have been able to make that analysis upon a fairly correct basis.

I am asked to take up Exhibit 95 and based upon my analysis of that exhibit and exhibit No. 112 state the number of active mines in the Pittsburgh district as of the most recent date available to me and classify those in any way I see fit.

(1489) Exhibit 95 shows 59 mines on the B. & O. Railroad taking route A. To Youngstown from the Pittsburgh District. These mines (1490) are shown on pages 6, 7 and 9 of exhibit 112, the totals on the three pages being 27, 14 and 18 respectively for a total of 59, as set forth.

The 27 mines set forth on page 6 are composed of 2 gas and by-product mines whose owners are not represented on the Monongahela or Allegheny Rivers; 3 gas and by-product mines whose owners are represented on the Alle- [fol. 1275] gheny or Monongahela Rivers. By that I mean whose owners also own mines on the Allegheny or Monongahela Rivers. Eleven medium to large steam coal mines and 11 small steam coal mines, where the acreage is practically exhausted, and by that I mean acreage which will only serve the normal output of the mine for two or three years longer.

On page 7 the 14 mines are broken down into one large gas coal mine, whose owner is not represented on the river; 11 medium sized steam coal mines and 2 small mines, practically exhausted. Those are steam coal mines. On page 9 the 18 mines are composed of 7 gas and steam coal mines whose owners are represented on the river, 1 mine listed as such is a cleaning plant only and is not a producer of coal; 4 are medium sized steam coal (1491) mines and 6 are small steam coal mines practically exhausted.

A summary of these 59 mines shows 3 gas and by-product mines not represented on the river, or rivers, 26 medium to large steam mines, 19 small mines practically exhausted, 10 mines represented on the river, and 1 mine not to be classified as such. That is the cleaning plant.

Kern's exhibit 96 shows 171 mines in the Pittsburgh district, taking route B to Canton. That also applies to Canton, Massillon and Cleveland on Exhibits 97 and 98. These 171 mines are found in Exhibit 112, as follows: On page 99, 42 mines; on page 100, 3 mines; on page 100, 14 mines; on page 101, 102, 77 mines; on page 103, 18 mines;

on page 104, 2 mines; on page 108, 15 mines; or a total of 171 mines.

[fol. 1276] The 42 mines on page 99 are broken down into three steam coal mines whose owners are represented on the river, 24 steam coal mines of medium size, 2 duplications found in exhibit 95 for the B. & O. Railroad list of 59 mines and 13 small steam (1492) coal mines practically exhausted.

On page 100, the three mines comprise one duplication and two small steam coal mines practically exhausted.

On page 100, the 14 mines are duplications found in Exhibit 93, B. & O. Railroad, page 7.

On pages 101, 102, the 77 mines comprise 9 gas and by-product mines whose owners are represented on the river, 2 duplications, and 3 worked out mines; 23 gas and by-product mines whose owners are not represented on the river, 19 small to medium steam coal mines and 21 small mines whose acreage is practically exhausted. Those are steam mines, unless otherwise noted they will always be that way.

By Mr. Orcutt:

I am asked when I speak of mines that are worked out, do I classify them as abandoned mines. We have in the total here since these May, 1930, figures, three or four mines that have been worked out and one mine that has been abandoned and the coal has to be moved through another opening. I will explain that in the summary under the list of worked out and abandoned mines. I am asked when I am going over this list and referring to pages to indicate any mines that are not active mines, indicate them by the mine, the name of the mine. There are only a few of them in the summary, and I would be glad to put them in. They are eight mines that have been worked out and abandoned in this total of 693. (1493) They are inactive [fol. 1277] mines now. They are entirely worked out or have been abandoned for reasons known to the owners, usually to take coal out to better advantage through some other opening. As to whether it is the opening that is inactive then, the mine as such would have to be called abandoned, but they are still taking coal out of the properties. The workings have not been abandoned. It is the mine that has been abandoned. The one where they are

taking coal out through a different opening is held on the active list.

(1494) I am asked while I am on a page I might as well indicate what mines are inactive. On pages 101 and 102, the three mines that have been listed as worked out are the Huron mine, the Stewart mine and the Champion mine. I am going to show the additions, if there are any, and I am going to show the very small number that have been worked out or abandoned. I think there is only one abandonment. These others are mines which have worked their coal out.

(1495) On page 103, the 18 mines are duplications of Exhibit 95, page 9.

On page 104, the 2 mines are 2 small steam coal mines.

On page 108, the 15 mines comprise one by-product coal mine whose owner is not represented on the river, 13 steam coal mines, small to medium in size, and one small stream coal mine practically exhausted. The summary of this group of 171 mines shows 24 gas and by-product coal mines whose owners are not represented on the river 56 small, medium and large steam coal mines, 39 small steam coal mines practically exhausted, 12 mines whose owners are represented on the river, 3 mines worked out and 37 duplications.

(Whereupon adjournment was taken until Friday, September 25, 1931.)

[fol. 1278] (1496) (Hearing resumed, pursuant to adjournment, Friday, September 25, 1931, at 10 o'clock a. m.)

Redirect examination of B. F. Hoffacker (Cont.)

By Mr. Martin:

At the recess yesterday afternoon I was still discussing Mr. Kern's Exhibits 95 to 99 inclusive.

Kern's Exhibit No. 95, shows in the Pittsburgh district active mines on the P. & L. E. Railroad to the number of 67. These 67 mines are listed in Exhibit 112 as follows: On page 131, 31 mines; on page 132, 18 mines; on page 133, 1 mine; on page 133, 3 mines; on page 134, 14 mines, (1497) or a total of 67.

On page 131, the 31 mines are composed of 16 small mines practically exhausted, one gas and by-product mine whose

owners are not represented on the river; 9 gas and by-product coal mines whose owners are represented on the river; 2 mines which have been sold to the Frick Coal Company, and whose coal will move out by river through Colonial dock; one mine worked out, and two mines listed as such which are cleaning plants and not to be regarded as coal mines.

By Mr. Orcutt:

As to which ones those are, on page 131, the two mines listed as mines, which are cleaning plants, are the Warden (123) and the Champion No. 5 (133). That is the plant that [fol. 1279] prepares the Banning coal. The Warden is the cleaning plant that prepares the Warden and Ocean mine coal of the Pittsburgh Coal Company.

On page 132, the 18 mines listed as such are all duplications of Exhibit 95, B. & O. Railroad, page 9 of Exhibit 112.

On page 132, the mine listed is a steam coal mine whose owner is represented on the river.

On page 133, the three mines are duplications of Exhibit 96, page 100 of Exhibit 112.

On page 134, the 14 mines are duplications of Exhibit 95, page 7 of Exhibit 112.

The summary of the active mines in Kern's exhibit for the (1498) P. & L. E. Railroad will therefore be as follows:

One gas and by-product mine whose owner is not represented on the river; 2 mines listed as such, but which are cleaning plants; 2 mines sold to a shipper of river coal, and should therefore not be listed as active railroad mines; one mine worked out; 9 gas and by-product mines whose owners are represented on the river; 16 small mines practically exhausted, and 36 duplications. That is a total of 67.

Kern's Exhibit 95, Connellsville district active mines, Baltimore and Ohio Railroad Exhibit 95, shows 65 mines. On page 11 of Exhibit 112 there are 22 mines; on page 12 of this exhibit there are 38 mines, and on page 14 of this exhibit there are five mines, or a total of 65 mines.

[fol. 1280] On page 11, the 22 mines comprise one by-product mine not represented on the river; 3 by-product mines represented on the river, 18 small mines practically exhausted.

On page 12, the 38 mines show 2 by-product mines not represented on the river, 10 by-product mines represented

on the irver, 12 mines located on the river and shown in exhibit 58 as able to ship rail or river or both; 4 mines are worked out or abandoned, and 10 small mines are practically exhausted.

On page 14, the 5 mines are composed of one by-product mine not represented on the river; 2 mines producing steam coal and 2 small mines practically exhausted.

A summary of the above shows 4 gas and by-product mines not represented on the river; 13 gas and by-product mines represented on the river, 12 mines located on the river; 30 small mines practically exhausted; 4 mines worked out or abandoned; 2 small steam coal mines. A total of 65 mines.

Kern's Exhibit 95, Connellsville district active mines, Pennsylvania Railroad, Exhibit 95, shows 62 mines. These are found on page 105 of Exhibit 112, 5 mines, page 106, 1 mine; page 107, 6 mines; page 109 13 mines; page 110, 4 mines; page 111, 33 mines, for a total of 62.

On page 105, the 5 mines are duplications of B. & O. Railroad mines shown on page 12 of Exhibit 112.

Page 106 the one mine is a duplication of Exhibit 96, on page 99 of Exhibit 112.

Page 107, the 6 mines are composed of 4 by-product coal mines not represented on the river and 2 small mines practically exhausted.

[fol. 1281] On page 109, the 13 mines are composed of 3 by-product mines represented on the river, 2 by-product mines not represented on the river, 1 by-product river located mine on our Exhibit 58, one steam coal mine and 6 small mines practically exhausted.

Page 110, the 4 mines are duplications of Exhibit 95, page 11 (1500) of Exhibit 112.

Page 111, the 33 mines are duplications of Exhibit 95, page 12 of Exhibit 112.

A summary of the above shows 6 by-product mines not represented on the river; one steam coal mine, 3 by-product mines represented on the river, 1 by-product mine located on the river, 8 mines practically exhausted and 43 duplications. A total of 62.

Kern's exhibit 95, Connellsville district active mines, P. & L. E. Railroad, shows 42 mines. On page 132 of Exhibit 112 there are 5 mines, page 135, 4 mines; page 135-6, 33 mines, a total of 42 mines.

On page 132 the five mines are duplications.

On page 135 the four mines are practically exhausted.

On pages 135-6, the 33 mines are duplications.

A summary of the above shows 4 mines practically exhausted, 38 duplications, a total of 42.

Kern's Exhibit 95, Fairmont district active mines, B. & O. Railroad, shows 131 mines.

On page 15-16 of Exhibit 112 there are 88 mines, pages 18-19 there are 43 mines, or a total of 131 mines.

[fol. 1282] On pages 15 and 16, the 88 mines are composed of 7 gas and by-product mines not represented on the river; 46 steam coal (1501) mines and 35 small mines practically exhausted.

On pages 18-19 the 43 mines are composed of 4 mines located on the river and shown on our Exhibit 58.

Those four are steam mines. 28 small steam coal mines and 11 small mines practically exhausted.

A summary of the above shows 7 gas and by-product mines not represented on the river, 74 steam coal mines, 46 small mines practically exhausted, 4 steam coal mines located on the river, for a total of 131.

Kern's exhibit 95, Fairmont district active mines, Pennsylvania Railroad, shows 48 mines. Page 117, exhibit 112 shows 48 mines of which 47 are duplications, and one is a steam coal mine.

A summary of the above shows 47 duplications and one steam coal mine.

Kern's Exhibit 95, Fairmont district active mines, P. & L. E. Railroad shows 48 mines. Pages 137-8, Exhibit 112, shows 48 mines. These are sup-lications. A summary of the above shows 48 duplications.

I am ready to summarize in one statement all of the mines which I have been speaking of yesterday afternoon and this morning.

(1502) A summary of the active mines shown in Kern's exhibits 95, 96, 97, 98 and 99 for the Pittsburgh, Connellsville and Fairmont districts: The total as set forth for these various districts is 693 mines. This total is composed of the following types of mines:

[fol. 1283] Gas and by-product mines not represented on the river, 45.

Steam coal mines, 160.

Small mines practically exhausted, 162.

Gas, steam and by-product mines located on the river, 17.
Gas and by-product mines represented on the river, 47
Mines worked out and abandoned, 8.
Duplications and improper listings of mines changing their status or ownership, since the last date of the Kern's exhibit.

By Mr. Fitzpatrick:

In using the descriptive words "improper listing, I don't mean to refer to the time when the exhibit was prepared. I mean an improper listing so far as a cleaning plant listed as a mine goes.

By Mr. Martin:

That, of course was improperly listed at the time when exhibit 112 was prepared, (1503) so to that extent at least Exhibit 112 is in correct. I was just endeavoring to group all of these into one figure so that we wouldn't have so many figures to argue over and to limit these proceedings, if that is possible. The number of mines is 254. Those figures make a total of 693 as presented in the Kern's exhibit. I might add here that in going through this exhi--t there are 8 mines in the Fairmont district shown in exhibit 112, at page 150, that do not appear to be listed, in the B. & O. Railroad list of 131 mines on Kern's exhibit 95.
[fol. 1284] I believe those mines should be included. They are in the Fairmont district, are active mines and are set forth on page 150 of exhibit 112. I think, if I am trying to correct this thing, that those mines properly belong in the total.
One of them is a gas and by-product mine not represented on the river, and seven of them are small mines practically exhausted. (1504) If those were added in then the total of the gas and by-product mines not represented on the river would increase from 45 to 46, and the total of the small mines practically exhausted would increase from 162 to 169, and the total mines shown in the Kern exhibit, plus the eight mines which Mr. Kern left out would increase from 693 to 701.
I am asked why I have seen fit to classify our mines as between those represented on the river and those not represented on the river. The mines not represented on the river

would be in competition with mines represented on the river, but the mines which are represented on the river would, in my opinion, not be in competition with inland mines owned by the same interest. It would hardly seem possible that they would compete with tmeselves.

I have heard practically all the testimony in this case. (1505) I have been here, with the exception of one day, throughout the entire proceding, and I heard the testimony by all of the consumer witnesses who appeared here, and the testimony as to the need for the by-product coking coal in Canton, Massillon, Lorain and Cleveland.

By Mr. Orcutt:

I am asked what is the difference between a mine that can properly be called a by-product mine and one that cannot be properly called a by-product mine, when they both [fol. 1285] ship by-product coal. (1506) The term gas and by-product mines is confined to those mines whose product is of such quality that it is useful for gas and by-product work.

By Mr. Martin:

I am asked what is the total number of mines shown in Kern's exhibits 95 to 99 in the Pittsburgh, Connellsville and Fairmont districts of gas and by-product character which are not represented on the river through the same ownership. (1507) My answer is 45, plus the one mine which Mr. Kern left out, or a total of 46.

I am asked if that number represents the total potential competition so far as gas and by-product mines which are inland in these thres districts are concerned.

(Mr. Orcutt objects, because it has not been shown that this witness knows all the potential competition.)

(After argument and discussion, transcript pages 1507-1511, the following occurred:)

Examiner Curtis: I don't think he can go twenty years ahead, or twenty-five or fifty or a hundred. We don't live that long in the future. We have got to be reasonable about those things.

The Witness: We can't project estimates that far in the future.

(Narrative resumed.)

By Mr. Martin:

In the entire Pittsburgh, Connellsville and (1512) Fairmont districts, there are 46 mines producing gas or by-product coal whose owners have no mines on the Allegheny or Monongahela River, as in Exhibit 112.

[fol. 1286] (1520) I have classified 46 of these 701 mines as mines producing gas and by-product coal not represented on the river through common ownership. (1521) I am asked to state what proportion of these 46 mines enjoy rail rates to Cleveland and in answering the question to utilize Exhibit No. 112, introduced in this proceeding by Mr. Kern if that will assist me.

Mr. Fitzpatrick: Mr. Examiner I am not objecting, but I would certainly like to know from Mr. Martin or the witness whether he is going to undertake to interpret exhibit 112 for us, or whether he is going to testify from his own knowledge.

Examiner Curtis: Let us find that out. Mr. Witness, any rate information you are asked to testify about is taken from some other exhibit of some other witness, isn't it?

The Witness: Most certainly.

(After further discussion, transcript pages 1521-1523, the following occurred:)

Examiner Curtis: Well, then you can build it up from two sources if you want to rely on it in your brief.

By Mr. Martin:

I think that is a proper assumption that if the rate is put in ex-river from Colona and Conway to Youngstown, river mines on the Allegheny and Monongahela Rivers would be in a position to use that ex-river rate in competition with the all rail rate from these 46 mines to the Youngstown district.

[fol. 1287] (1524) Just as the same mines would be in a position to use the proposed ex-river rates from Wheeling & Lake Erie river division points to Cleveland, Canton, Massillon and Lorain. The situations I think in that respect are parallel.

(1525) I am asked to turn to Mr. Duffy's exhibits 84

and 86 and state what if any inaccuracies I have found in those exhibits.

Exhibit 84 purports to show the mines on the Allegheny and Ohio rivers now equipped with river tipples, ports on the Ohio River, Wheeling & Lake Erie Railroad mines not now equipped with river tipples, but located so as to permit using river transportation when and if desired. This exhibit shows the following mistakes:

Mine at Kenguk Bench shown as being a mine equipped with (1527) river tipple. That is incorrect. There is no such mine at this point. Mine marked Valley Camp shown as a mine equipped with a river tipple. That is not correct. This mine has been worked out and abandoned.

Mine at Creighton shown as being equipped with a river tipple. That is not correct, meaning that the mine did not have a river tipple.

Exhibit No. 85 shows mines on the Monongahela River in Pennsylvania and West Virginia now equipped with river tipples. It also shows mines not now equipped with river tipples, but located so as to permit using river transportation when and if desired. It also shows mines unable to dump directly from mine into river barges.

(Fol. 1528) It purports to show them by the legend on the map. I am asked what inaccuracies I have found in this exhibit. (1527) Beginning at the top of the map, mine marked Thomas mine is a mistake. There is no such mine at this point. Mine marked Star mine, having a rail and river tipple, the name is inaccurate. This should be National No. 1 mine. Mine marked Gallatin Mine, shown as having a river and rail tipple. This is incorrect. The river and rail tipple has been abandoned and the coal moves inland to the Ocean and Warden mines of the Pittsburgh Coal Company. The Black Diamond mine is shown as having a river and rail tipple. There is no river and rail tipple at this point. Mine shown as Wood mine having a river tipple. This is incorrect. This mine has been worked out and abandoned. Mine shown as Vesta No. 3, having a river and rail tipple. This is incorrect as this tipple and mine now ship through Vesta No. 4. Mine marked Green Hollow Mine. This mine has been worked out and abandoned. Mine marked Albany mine. This mine has been worked out and abandoned. Mine marked Fredericktown mine. There is no mine at this point. It has been worked

out and abandoned. Mine marked Edwina Mine. There is no mine at this point. Mine marked Elna Mine. There is no mine at this point. It has been worked out and abandoned. Thompson No. 1 mine is not shown as having a river tipple. This mine is equipped with a tramway to the river and has a river tipple. Palmer Dock, the river loading point of the Frick (1528) Coal Company is not shown on the map. The Palmer Mine shown as having a rail and river tipple does not have a river tipple. The Cumberland Mine has been worked out and abandoned. The Stella Mine has been worked out and abandoned. [fol. 1529] Sandy Run Mine, shown as having a rail and river tipple. This rail and river tipple has been abandoned by the present owners and the coal remaining at this mine will move to the river through another opening. Mines shown as Geneva and Betchy have been worked out and abandoned. Mine shown as Stevenson has been worked out and abandoned. Mine shown as Penn Pit having a rail and river tipple. This tipple will be abandoned and coal will move through another opening to the river by present owners. It is moving that way now. That is a recent acquisition. It has been acquired by the Duquesne Light Company. That applies also to the Sandy Run mine. Mine marked Jeanetta Mine has been worked out and abandoned. Mine shown as Trapt, there is no river tipple at this point. Mine shown as Golden, being a mine unable to dump directly into river barges. This mine has been worked out and abandoned. Mine shown as Pitt. This mine has been worked out and abandoned. Errors of spelling on this map are simply a matter of misinformation and are not to be criticised.

(1529) Recross-examination.

By Mr. Orcutt:

I am asked to turn to page 11 of Exhibit 112.

Q. I want to find out the mines which are practically exhausted. I think you have eliminated three or four mines and said the rest were practically exhausted, so if you will give us the names of the three or four that will serve the purpose.

A. Lemont No. 2, Oliver, No. 1, Leith, Crossland, Eagle.

[fol. 1290] (Narrative resumed.)

The other 17 are practically exhausted. I mean by practically exhausted that having acreage enough to support the normal output for only the next one or two or three years. I think I set that forth in the beginning as to what the definition of "practically Exhausted" would cover.

I consider the normal output an average of the past five years. I am asked to give the average output of the past five years of all those mines. I have it here for the past five years. I got that average from the Department of Mine figures for the state of Pennsylvania.

(1530) The available tonnage figures left in the mine is computed from the number of acres remaining or left at the mine multiplied by the number of tons per acre recovered at the particular operation in question. I got the number of acres left at the mine from sworn statements sent in annually to the county official in which the mine is located, or from statements tendered to me personally by the owners of the mine. I am asked how many of those mines that are practically exhausted have I visited myself since March 31, 1930. None of them. So that my information as to whether or not they are practically exhausted depends, first, upon what definition is used of practically exhausted, and secondly, it depends upon figures that I have derived from some other source as to the average tonnage over the past five years, and third, it depends upon figures that I have received from some outside source, not my own, as to the amount of acreage left in the mine.

[fol. 1291] (1531) (Mr. Orcutt asks on behalf of protestants that the entire testimony of this witness as to these mines be stricken from the record. After discussion the following occurred:)

(1532) Examiner Curtis: Well, Mr. Orcutt, you put on a witness and he had to get his information from second-hand sources. I suppose in the very nature of the circumstances that is the only way we can get at something. Your motion to strike is denied and you may have an exception. Proceed with something else.

(Narrative resumed.)

By Mr. Orcutt:

I never was at Renoufs Beach mine. There is no mine

there. I have never visited the Creighton mine personally within the past eighteen or twenty years. I have been past the mine, however, daily a number of times within the past year. The same answer applies to the Valley Camp mine.

[fol. 1292] (1533) H. J. Adell, a witness previously called on behalf of the respondents, thereupon resumed the stand and testified further as follows:

Redirect examination.

By Mr. Martin:

Mr. Martin: Mr. Examiner, at the time Mr. Durham was on the stand we reserved the right to put into the record certain information showing the minimum weights on bituminous coal carloads for the protestant carriers and other carriers operating in this general central freight association territory. Mr. Durham hasn't had an opportunity to get that information personally, but Mr. Adell secured it for him and therefore I think it proper that Mr. Adell put it in.

By Mr. Martin:

I have examined the tariffs, individually and agency tariffs, showing the minimum weight on bituminous coal in carloads for the carriers operating in central freight association territory.

I have prepared an exhibit showing in concise form the minimum weights which appear in those tariffs. (Offered for the record.) (1534)

(Respondents' Exhibit No. 141, Witness Adell, received in evidence.)

The individual tariffs are shown on page 1 of the exhibit and the agency tariffs on pages 2 and 3 of the exhibit.

I have included in my note at the bottom of page 1 the minimum weights shown in the tariffs which were suspended by the Interstate Commerce Commission in I. & S. Docket 3282, Coal, Bituminous, ex-river from Colona and [fol. 1293] Conway, Pa., to Youngstown. In the Pitts-

burgh & Lake Erie tariff which was so suspended the minimum weight is shown as 30,000 pounds.

I have familiarized myself with the reports of the Interstate Commerce Commission in the two Holmes & Hollowell cases appearing at page 687 of volume 60 of the Interstate (1535) Commerce Commission reports, and at page 11 of volume 69 of the Commission's reports.

In 60 I. C. C. the Commission prescribed one scale for application on bituminous coal to the head of the lakes, but in 69 I. C. C. they prescribe two scales, one a basic scale and one a maximum scale.

I am asked if the Commission indicated in those reports to what routes the maximum scale should apply.

(Objected to by Mr. Orcutt.)

(After discussion the following occurred:)

(1536) Examiner Curtis: Read your fifty words, and let us get along.

Mr. Orcutt: I assume that is overruling my objection, Mr. Examiner?

Examiner Curtis: No, that is not passing on it at all. I am trying to make some progress.

Mr. Orcutt: Well, we are going to be here until Monday if they are going to read all the reports of the Commission. They have read them in two or three times already.

The Witness: "The distances under such scale should be computed via the shortest routes embracing as a maximum the lines or parts of lines of not more than three carriers via existing connections for interchange of carload traffic."

[fol. 1294] (1540) By Mr. Martin:

I have prepared a statement showing the average short line distance from all Wheeling & Lake Erie Railway River Division points to Cleveland, Ohio, and from Martins Ferry, Ohio and Mingo Junction, Ohio, on a rate produced by an application to the average short line distance of 75.5 per cent of the Holmes & Hallowell maximum scale. (Offered in evidence.)

(Mr. Orcutt objects on behalf of protestants to the receipt of this exhibit in evidence for the reason that the short

line mileages are absolutely irrelevant and immaterial to this proceeding.)

(After discussion the following occurred:)

Examiner Curtis: They are in the process, yes; committed to have them in some form or another. I am going to admit this merely as a rate comparison and for no other purpose.

(Respondents' Exhibit No. 142, Witness Adell, received in evidence.)

Mr. Martin: I should have stated, Mr. Examiner, so that it might be entirely clear that Mr. Adell's exhibits dealing with the Holmes & Hallowell scale are submitted strictly as rebuttal exhibits to show certain computations which Mr. Carbine did not show in his Holmes & Hallowell scale exhibits. They are not (1542) put forward here as in any sense proposals on the part of the Wheeling & Lake Erie for the establishment of these rates or in justification of the rates proposed, except to the extent of showing what we believe is an improper application of the Holmes & Hallowell scale theory in this case, and had the Holmes & Hallowell exhibits not been introduced by Mr. Carbine of course, [fol. 1295] we would not have introduced these exhibits. They are strictly rebuttal exhibits.

Mr. Orcutt: I would like a ruling, Mr. Examiner, on my objection.

Examiner Curtis: Well, your objection, so far as it goes to anything but a rate comparison, is sustained. I am going to admit this, and overrule your objection to the extent that this thing may be used as some sort of a comparison, confining it to that use. Your objection is sustained except to the extent I am admitting it as a rate comparison pure and simple.

Mr. Orcutt: I will just note an exception to that ruling.

(Narrative resumed.)

By Mr. Martin:

This exhibit shows the shortest possible distance between the points of origin on the Wheeling & Lake Erie to the destinations, Cleveland, Canton, Massillon and Lorain, accord-

ing to the formula used in the Eastern Class Rate Investigation case, I. C. C. Docket 15879, which was the shortest distance without transfer of lading.

In connection with these computations I have used more than (1543) three lines of railroad in any case, only in so far as the mileages covering the origin points Brilliant and Mingo Junction to Lorain are concerned.

I have shown on page 4 what the effect of the mileages on the average mileage would be if instead of using four carriers in this instance I had used only three, and if so, what would be the effect on the average distance of 141.9 miles. [fol. 1296] If I had made that substitution it would not have affected the average distance of 141.9 miles to Lorain. I have also shown upon this exhibit the individual short line mileages from Martins Ferry to the four destinations, and from Mingo Junction to the four destinations. I have shown the average of these two individual mileages to the four destinations.

I have also shown at the foot of each of the first four pages of the exhibit the rate under the Holmes & Hallowell maximum scale applicable to the block which is represented by the average distance from the river division points to each of the four destinations, respectively, and I have also shown what 75.5 per cent of that rate would be.

(1544) As to why I took 75.5 per cent for that purpose, 75.5 per cent is the percentage of the Holmes & Hallowell maximum scale used by the Commission in the 77 cent rate from Colona and Conway to Youngstown, Ohio.

The Holmes & Hallowell maximum scale rate for the block of 40 to 50 miles is $1.02. That appears at page 18 of the Commission's report in the second Holmes & Hallowell, case 69 I. C. C. 11.

The average short line distance used in I. & S. 3282, from Colona and Conway to points in the Youngstown district, fell in the 40 to 50 mile block.

The rate suggested as a maximum reasonable rate by the Commission in its decision in I. & S. Docket 3282 for application as an ex-river rate from Colona and Conway, Pa., to Youngstown and the points grouped therewith, including [fol. 1297] Warren, Ohio, is 77 cents per net ton. (1545) 77 cents is 75.5 per cent of $1.02. That is the same figure that I have used at the foot of each of the first four pages in my exhibit 142.

I have examined the exhibit Mr. Carbine submitted, No. 120, entitled "Exhibit showing the Holmes & Hallowell scale progression on a base rate of 77 cents for the 40 to 50 mile block."

In my opinion this exhibit does not portray the correct progression under the Holmes & Hallowell scale on the basis of 77 cents for the 40 to 50 mile block.

As to why it does not, the best explanation I can give of that is by referring to Mr. Carbine's Exhibit No. 119, where he has used 85 per cent of the Holmes & Hallowell scale, which was apparently the basis established by the Commission in the American Rolling Mill case. If the same method of progression had been used in the Exhibit 120 each block after the block of 40-50 miles would have been progressed on the basis of 75.5 per cent of the Holmes & Hallowell scale, and would have produced different amounts per ton for the various groups.

(1546) As progressed by Mr. Carbine, the Exhibit 120 shows that the lowest block bears a relation of 75.5 per cent to the Holmes & Hallowell scale, while the highest block bears a relation of almost 95 per cent to the corresponding block.

I have prepared a statement showing the rates which would be produced by the application of 75.5 per cent of the Holmes & Hallowell basis and maximum scales for distances ranging from 40 to 150 miles. (Offered in evidence.)

(Respondents' Exhibit No. 143, Witness Adell, received in evidence.)

[fol. 1298] I have no comment to make other than it shows the different results arrived at when compared with Mr. Carbine's Exhibit 120. In other words, my exhibit 143 shows different scales of rates for the various mileage blocks when compared to Exhibit 120. Both Exhibit 143 and Exhibit 120 have the same figure of 77 cents representing 75.5 per cent of the scale for the block 50 miles and over 40. But when we reach the highest block shown in my exhibit, which is 150 miles and over 140, my figure is $1.37 per ton, while Mr. Carbine's is $1.57 per net ton. (1547) And the note at the bottom of the exhibit explains why I have applied 75.5 per cent to these scales. I have made the same kind of progression here as Mr. Carbine did in his Exhibit

No. 119, except in that case he used 85 per cent throughout and in the case of my exhibit 143 I have used 75.5 per cent.

I have prepared a statement showing the proposed ex-river rates compared with rates produced by the application of 75.5 per cent of the Holmes & Hallowell scale to the average short line distances from Wheeling & Lake Erie River Division points to Cleveland, Canton, Massillon and Lorain, Ohio. (Offered in evidence.)

(Respondents' Exhibit No. 144, Witness Adell, received in evidence.)

Referring to Mr. Carbine's Exhibit 121 I have investigated the movement under the scale of rates prescribed in the case of E. T. Slider vs. B. & O. 96 I. C. C. 65, which is used as a basis for that exhibit.

I have ascertained the movement under that scale of rates for the five year period 1926 to 1930, inclusive.

[fol. 1299] (1548) The source of the information as to the amount of the movement is from Form 8 of the Ohio Bureau of Coal Statistics, for the years 1926-27-28-29 and 1930. I have it over in the office. I can get it.

The total movement from 1926 to 1930 inclusive was 90 tons. This 90 tons moved all in the year 1926 and (1549) there has been no movement since 1926. I am restricting my answer to the ex-river rates.

I have investigated the movements under the rates shown in Mr. Carbine's exhibit 128 in which the W. & L. E. participates. The period covered in my investigation was January 1, 1929 to September 1, 1931. The source of the information which I obtained is the records of our Auditor of Revenue.

I am asked what those records disclosed as to the movements under any of the rates shown on that exhibit in which the W. & L. E. participated.

From Adena to Wellington, during the year 1929 there were no cars moving; during the year 1930 there was no movement, and during the year 1931, up to September 1, 1931, there was none. Adena to Chagrin Falls, Ohio, during 1929, nothing moved; during 1930, one car moved, and during 1931 up to September 1, there were two cars that moved. As to the movement from Smithfield, Ohio, on the Pittsburgh & West Virginia, to Clarksfield, Ohio, on the W. & L. E., there were no cars during 1929, no cars dur-

ing 1930 and none up to September 1, 1931. From Smith- [fol. 1300] field, Ohio to Wellington, Ohio, two cars moved during 1929, nothing during 1930 and no movement up to September 1, 1931. As to the other rates shown on this exhibit I have no means of acquiring first hand information of the movement. (1550) I have examined Mr. Carbine's exhibit 1932 in this case.

It is not correct if I place the proper interpretation on the exhibit, to this extent; that on page 1 of exhibit 132, where the W. & L. E. is shown as the delivering carrier, the switching charge on bituminous coal is shown as 20 cents per net ton. That should be amended by stating that the switching charge is 20 cents per net ton with the exception of coal received from the Erie Railroad, where the W. & L. E. charges 32 cents per net ton. On page 2 of this exhibit, in so far as the Lorain & West Virginia Railway is concerned on traffic delivered to the B. & O. at South Lorain, the B. & O. Railroad charges the Lorain & West Virginia on bituminous coal 19 cents per net ton and there is also included an intermediate switching charge of $4.50 per car for the lake terminal. On traffic delivered by the Lorain & West Virginia to the Nickel Plate, the Lorain and West Virginia is charged by the Nickel plate 32 cents per net ton, and there is also included a lake terminal intermediate switching charge of $4.50 per car. On this traffic the Lorain & West Virginia only absorbs the Nickel Plate charge and the intermediate charge when the coal originates on the Wheeling & Lake Erie. From junctions with the lake terminal at South Lorain to industries on the Lorain & West Virginia, the charge is 32 cents per net [fol. 1301] ton for certain deliveries and for other deliveries, including (1551) team tracks, 38 cents per net ton.

In the second column, where a charge of 32 cents per net ton is shown for account of the Nickel Plate as an intermediate switching charge, I just can't find where the Nickel Plate would be intermediate carrier on traffic delivered at South Lorain. I might be wrong on that, but I would like to see where it is shown.

Cross-examination.

(1552) By Mr. Fitzpatrick:

I am asked if Exhibit 141 is offered in justification of the minimum weight of 50,000 pounds per car attaching to

the proposed ex-river rates. Yes, and no. I do not know just why it is offered other than it is a statement of the minimum weights shown in various tariffs published by Agent Davis and the individual carriers. It might be in justification of our minimum weight on the proposed ex-river coal tariff.

(1556) I am asked if it is the position of our company that if the ex-river rates are permitted to be made effective our company wishes that shipper be privileged to load as little as 50,000 pounds on the cars without paying anything in excess of the actual weight of the shipment.

(1557) I do not know a thing about the position of our company, in so far as this tariff is concerned. I had nothing to do with the establishment of the rate or the tariff or any of the rules and regulations in the tariff.

[fol. 1302] I am asked if Exhibit 141 is offered in support of a minimum weight of 25 tons per car. I don't recall just what it was. I believe my answer was to the effect that (1558) I did not know whether or not this exhibit was put in for the purpose of justifying the minimum weight in our proposed ex-river tariff or whether it was just to show what the minimum weights are in connection with tariffs in the same territory.

By Mr. Fitzpatrick:

Q. Then, as you understand it, it is not offered in justification of the minimum weight of 25 tons per car.

The Witness: I just said that I did not know whether it was or not.

Mr. Martin: I object to that.

Examiner Curtis: I think he has gone as far as he can.

(Mr. Fitzpatrick moves that the exhibit be stricken from the record on the ground that it has no connection with any issue that is presented to the Commission, on the ground that on the statement of Mr. Martin, it has no materiality in the case at all.)

Examiner Curtis overrules the objection.

(1560) By Mr. Fitzpatrick:

The minimum weight in connection with rates on coal via the Wheeling & Lake Erie Railroad from Ohio No. 8 is

the same minimum as is shown on this ex-river proposed tariff, 50,000 pounds, 25 tons per car.

Examiner Curtis:

It has been in effect for years. I might also add, if I may, that this Exhibit No. 141 will show the Baltimore & Ohio Railroad in connection with their ex-river rates from Cincinnati carry a minimum weight of 15 tons of 2,000 pounds.

[fol. 1303] By Mr. Fitzpatrick:

That is in the exhibit. Our route to Lorain is over the line known as the Lorain & West Virginia Railroad. (1561) That is the same line in respect of which I gave some figures as to switching charges and to Lorain this morning. I believe I referred to a switching rate of the Nickel Plate at Lorain of 32 cents per ton. In connection with that rate, there was there an intermediate switching charge. The intermediate switching charge was $4.50 per car for account of the Lake Terminal Railroad. It is obvious that if the rates under suspension were permitted to be effective, they would under our absorption arrangement include the delivery to the Nickel Plate at Lorain.

I believe that the switching charges which I mentioned should be included in the proposed rates to Lorain, Ohio.

I am asked if I would not understand that the restriction attaching to the absorption arrangement to the effect that the absorption arrangement only applied on traffic originating on the Wheeling & Lake Erie would exclude traffic originating on the river and then delivered to a common carrier at Mingo Junction, (1562) it would be my understand- that provision providing for absorption only on traffic originating on the Wheeling & Lake Erie would cover the connections proposed in the ex-river tariff. It would not exclude the application of the absorption rate.

By Mr. Orcutt:

I had given study to mileage scales. I am referred to my Exhibit 143, where I have shown a scale and asked what are the advantages of that scale over the scale shown by [fol. 1304] the protestants in Exhibit No. 120.

On Exhibit No. 142 for the block 60 miles and over 50, under our proposed scale the rate would be 84 cents while on Exhibit 190 for the block 60 miles and over 50, the rate would be 86 cents, an advantage of 2 cents.

(1362) I am asked why is my scale, taking into consideration the rate of progression and everything else, when I make a scale, a better scale than the scale proposed in protestant's Exhibit No. 190. For one reason, this scale proposed by the protestants' Exhibit No. 190 in their rate of progression they have taken the full measure of progression as shown in the Holmes & Hallowell scale. If this scale is to be constructed on a basis of 75.5 percent of the Holmes & Hallowell scale the progression should also be on that same basis of 75.5 of the Holmes & Hallowell scale.

I am asked if I have ever made any mileage scales. I have had quite a little experience in the construction of mileage scales. I know what is meant by rate of progression.

(1363) If I were given a mileage scale and asked what rate any mileage block called for under that scale I could find it.

I am asked if having found that and having found a certain rate say 80 cents for a block from 60 miles to 70 miles, what has that particular one rate got to do with the rate of progression applied throughout the scale, if any. Nothing, other than that when the Commission sets a scale they also consider the rate of progression. In this particular scale we are speaking of, 75.5% of the Holmes and Hallowell scale, I doubt if the Commission was prescribing the rate of progression they would also prescribe the progression of 75.5% of the 4th progression in the Holmes & Hallowell [Ful. 1365] scale.

When the Commission prescribes a point to point rate I do not understand that they necessarily at the same time fix definitely any rate of progression to be employed in extending that rate for distances beyond that point to point distance.

I am asked what has any one specific rate for any one specific distance got to do with the measure of the rate of progression employed in any mileage scale on a point to point rate. (1365) In the point to point proposition there is no rate of progression. It is one set rate ordered in

by the Commission, or set by the carriers for hauling traffic from point to point.

If I were given a point to point rate and that rate were given as a base rate and I were asked to construct a mileage scale above and below that rate, I would have to take the recognized formula or rate of progression in that particular vicinity or territory and be governed by that progression, on whatever commodity you are speaking of. Here I took the Holmes & Hallowell scale. The rate of progression for each block in the Holmes & Hallowell scale varies. Nine cents, eight cents, starts out with nine cents, I believe, and when you get down to about 400 miles the rate of progression is 12 cents and 13 cents.

I did not employ that rate of progression in my scale on the right hand side in my Exhibit 143. (1566) I said I took 75.5 percent of the Holmes & Hallowell progression. I am asked if 7 cents 75.5 percent of 9 cents, if I took it. The way I constructed this exhibit if I have to go into the detail is that I took the Holmes & Hallowell scale rate [fol. 1306] shown for each block and then took 75.5 per cent of that rate which gave me the scale of rates shown in Exhibit No. 143.

I am asked if I did not take a rate of progression and apply it to the 77 cent rate. I did not take the Holmes and Hallowell rate of progression, if that is what you mean. What I did was to take the rate shown in the Holmes & Hallowell scale for the various blocks and apply 75.5 per cent of that scale in order to arrive at my figures on Exhibit No. 143.

Q. You didn't use any rate of progression at all. The rate of progression naturally followed after your calculation. Is that true?

A. If that is the way you calculate it, you are right.

(Narrative resumed.)

(1567) I told you what I did and if you calculate it that way, that must be so.

I did not take any definite rate of progression to apply to a 77 cent rate for a distance of 50 miles and over 40 to construct the scale shown in the extreme right-hand side of my Exhibit 143. My Exhibit 143 does not say anything about progression. Exhibit 143 states "Statement showing rates produced by application of 75.5% to Holmes and Hallowell Basic and Maximum scales."

I did not take any definite rate of progression to apply to the 77 cent rate for a distance of 50 miles and over 40 miles to get the scale that I have shown on the extreme right-hand side of my Exhibit 143.

[fol. 1307] (1568) The rate of progression is one of the elements of any mileage scale. According to your explanation, I have used no rate of progression.

The column of figures in the extreme right-hand of my Exhibit 143 is a mileage scale, most assuredly. It is made by the use of applying 75.5 percent of the Holmes & Hallowell scale for the various mileage blocks shown on the exhibit.

Off hand I would say that the distance from Mingo Junction to Cleveland via the Wheeling & Lake Erie is about 152 miles.

I am asked if that is the fact, why did I end the scale shown on my Exhibit 143 at 150 miles. I saw no necessity for producing or projecting this scale beyond 150 miles. If you desire me to progress that scale it can be readily done. I have the figure here.

(1569) I figure our average distance shown in Wheeling & Lake Erie tariff 166 to Cleveland as 147 miles. I noted that the average distance covering the rate to Canton or rather, to Massillon, was 80 miles and, therefore, I progressed my scale from 40 miles to 150 miles to take in all the mileages shown on my various exhibits.

I am asked if on protestants' Exhibit 120 I have only made a study of scales, and what rate of progression was used there. It is my understanding that the actual progression as shown in the original Holmes & Hallowell scale is used, namely between the blocks 50 miles and over 40 miles and the next block 60 miles and over 50 miles, 9 cents was added. Similarly, as to the respective blocks in 69 I. C. C. 11.

[fol. 1308] That was the rate of progression employed by the Commission in the Holmes & Hallowell scale. That rate of progression is distorted by the computation of any percentages or anything else. I am asked to show where it is distorted, and to show any mileage block where the rate of progression does not correspond to the rate of progression for the same mileage blocks in the Holmes & Hallowell scale.

(1570). I didn't say that. It does correspond to the

rate of progression in the Holmes & Hallowell scale. It is my opinion that the rate of progression as shown in the Holmes & Hallowell scale is not proper for a scale starting in at a base rate of 77 cents which is 75.5 percent of the Holmes & Hallowell scale.

I am asked is that rate of progression used in protestants' Exhibit 120 distorted by the use of any percentages of the Holmes & Hallowell scale rate of progression or not. I do not believe I can. I do not know what he is driving at: (1571) I said in my Exhibit 120 the Holmes & Hallowell scale has been employed. The full Holmes & Hallowell rate of progression has been employed. The full Holmes & Hallowell rate of progression having been employed, it follows that the rate of progression has not been distorted from the original Holmes & Hallowell scale, if that is what you want me to say.

On my Exhibit 143 I refer to a basic and a maximum scale. I have read the decision of the Holmes & Hallowell case a couple of hundred times. I don't know what is the difference between the basic and maximum scale. I would presume the term "basic" means the original scale. I don't know if it does. I don't know what it means in this instance.

[fol. 1309] As to whether when I put "basic scale." in my exhibit 143 I did not know what it meant, all that I did was to reproduce the scales shown in 69 I. C. C. 11, the Holmes & Hallowell scale. I don't know that the basic scale was the scale fixed before the increases under Ex-Parte 74 and before the 10 percent reduction.

I am asked if I don't know that the basic scale in every instance represents the original rates reflected in the maximum scale which (1573) I call the maximum scale, and which have been increased by 40 percent and then decreased by 10 percent, increased by 35 percent and then decreased by 10 percent. I have been trying to find out what this basic scale was for a long time. Apparently Mr. Orcutt has just solved the problem for me. I just reproduced it out of the Commission's decisions.

Redirect-examination.

By Mr. Martin:

I was asked some questions as to deliveries at Lorain beyond the Lake Terminal Railway on which the Lake Ter-

minal might act as an intermediate carrier, I do not know of any consumer of by-product coal located on the Nickel Plate Railroad which was referred to by Mr. Fitzpatrick. I have examined the reply of the respondents in this proceeding filed on or about June 15, 1931. (1574) I am handed a copy of the reply and I am asked how much traffic has moved from the Wheeling & Lake Erie via the lake terminals as intermediate carrier to destinations on other lines in Lorain.

[fol. 1310] (Reading): "If this ex-river coal should move to industries on other lines of railroad in Lorain a higher switching absorption cost would be entailed, but during the past three years only an insignificant amount of coal moving to Lorain over the lines of the Wheeling—less than 2 cars per month—has been consigned to receivers of freight on lines other than the Lake Terminal Railroad Company, and these higher absorptions have, therefore, been disregarded in computing the costs to Lorain."

I have been asked numerous questions this afternoon about my Exhibit 143 and Mr. Carbine's Exhibit No. 120. There is nothing said in the heading of my Exhibit No. 143 about the progression, or rates of progression. That Exhibit 143 is prepared in the same manner at least so far as the maximum rate is concerned, as Mr. Carbine's Exhibit No. 119. Nothing is said in the heading about rates of progression. (1575) I have been asked whether I know something about mileage scales and I have said that I did. If I were given a scale on what I will call a 100 percent level, for example, and were then given a figure for a low block, 40 to 50 miles, and told that was 75.5 percent of the corresponding figure in the 100 percent scale and were asked to construct a scale based upon that 75.5 percent figure, I most certainly would not construct it by adding to it the full rates of progression shown in the 100 percent scale. I would not do that because my experience in connection with the various scales not only prescribed by the Commission but instituted by the carriers—it has generally been the practice to take the percentage proportion of the base rate for whatever block you were working on.

[fol. 1311] In other words, by doing that I apply the percentage 75.5 per cent, or whatever it may be, to the rate of progression throughout the scale. Take your class rates, if you use the same rate of progression on your class rates

as the first class is to the succeeding classes and use that same rate of progression for a commodity taking 75.5 per cent of the class (1576) rate, you surely would not arrive at the true 75.5 percent of that class rate for the scale you were working on.

I would consider a scale prepared in the form of Exhibit 120 a distortion. I have never seen a scale prepared this way as yet. I am familiar to a certain extent with the territory in which the Holmes & Hallowell maximum scale was applied. I have studied the decisions of the Commission relating to these scales and have observed the statements contained therein concerning the transportation conditions there.

As a result of that study I am asked what can I say so far as the Commission has passed upon it as to the matter of the rate level and traffic density of that northwestern territory as compared with the central territory.

The Commission distinctly states and shows in the Holmes & Hallowell scales that the conditions in the Northwest are not comparable with the conditions in this territory here. I say that would be my interpretation of the (1577) Commission's findings as to the conditions in that territory. If you compare the Commission's findings of the conditions in that territory to this territory here there would be no way to compare them.

[fol. 1312] I have made a diligent search to find where the Commission has applied the Holmes & Hallowell scale or percentages of it in central freight association territory in my preparation for this case. I do not recall having found an instance where they have prescribed the full Holmes & Hallowell maximum scale for application in central freight association territory. I have never found an instance where they have prescribed a scale which was constructed in the same manner as Mr. Carbine's scale on Exhibit No. 120.

Recross-examination.

By Mr. Orcutt:

I have never made any investigation of the territory and the operating conditions in which the Holmes & Hallowell scale applies. (1578) I have been through there. I have

been through that territory. I have not ridden from Duluth to the Twin Cities.

I am asked if I were to follow the theory used in the construction of my Exhibit 143 in the light of Mr. Martin's redirect examination, and if I were given a rate of 40 cents for a distance of 50 miles and over 40 miles and I were told to construct a scale beginning with blocks of from one mile up, whether it is true that as I went down below that figure I would reach a point where the rate would be a minus rate. I don't know. I do not believe by using my Exhibit No. 143 there would be any time where you would have a minus figure.

(1579) I don't know. I would have to sit down and figure it out. I am asked if it was true that I got such rates that it would indicate to me that my theory was still a correct and workable theory. I can not answer.

[fol. 1313] I am asked if in connection with my Exhibit 142, what was the rule for the formula for the ascertainment of the short-line distance employed in the Eastern Class Rate case. If I recall correctly, it was the shortest possible distance between two points without transfer, which would not necessitate transfer of that load. No mention was made as to the number of lines.

I am asked what was the formula used in the Holmes & Hallowell scale. (1580) Three carriers were the maximum. The two formulas were different to that certain extent, yes, but in the Holmes & Hallowell scale they specifically provided that—in the Holmes & Hallowell scale, the origina-, 60 I. C. C. page 713, it is stated:

"Distances under such scale should be computed via the shortest routes, embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic."

In the preparation of my Exhibit 142, the maximum number of lines that I used was three, with the exception of to Lorain, and I have explained what the difference would be there.

I am referred to page 1 and asked how many lines I used in constructing the distance from Stringer, Ohio, considering the same lines as two separate lines where used twice. (1581) I have used the Wheeling & Lake Erie. If you count the Wheeling & Lake Erie, which is used twice in the

computation—if you count that as two lines, I have used 4 lines, but I count the Wheeling & Lake Erie as one line.

[fol. 1314] By Mr. Fitzpatrick:

I am asked if in my study of scales I familiarized myself with the sand and gravel scale in central freight association territory shown as the West Penn scale, and also the Trunk Line scale on sand that has been prescribed by the Commission. I would not have any experience in connection with trunk line scale, but I have seen the Penn Sand and Gravel scale. I am not familiar with the scales on sand and gravel that have been prescribed for trunk line territory by the Commission.

(1582) Edward Briggs, a witness previously sworn and examined was recalled and testified further as follows on behalf of respondents.

Direct examination.

By Mr. Martin:

I was withdrawn from the witness stand in order to check the exhibit offered by the protestants as No. 116 and so identified. I have checked that identified exhibit. (1583) I am asked to state what errors I have found in it covering the period for which it applies, namely January 1, 1929, to April 1, 1930, inclusive.

On the exhibit the statement of the name of the mine Zelka, location at Dillonville, should have read Zitko mine at Georgetown, 7 miles beyond Adena, the mileage being exactly the same as shown as applying at Dillonville. Shadyside was included in the statement for the reason that there were four cars shipped in January, 1930, and we had [fol. 1315] billing for those cars, from which we made up our records. It seems that at some later date that billing was voided and we were not advised of it and we did not get the cars. Therefore, that mine that was included in the statement is in error.

That mine is not as a matter of fact located on the Wheeling & Lake Erie. The reason that I included that mines in my data which was attached to Exhibit 116-A was be-

cause I had incorrect information as to the billing of those cars.

(1584) I have caused to be prepared under my direction a statement showing active mines located on the Wheeling & Lake Erie in the Ohio No. 8 district, with the distance to Cleveland, Lorain, South Lorain, Canton and Massillon, Ohio, as of May 31, 1931. It is correct to the best of my knowledge and belief. (Offered as Exhibit 145.)

(Respondents' Exhibit No. 145, Witness Briggs, received in evidence.)

This Exhibit 145 shows a total of 16 active mines as of May 31, 1931.

I selected the date of May 31, 1931 because May 31 was practically the last time on which most of the mines on our road were in operation. After May 31, (1585) there were labor troubles in the district and since that time there have been more or less labor troubles in the district and the mines have not operated regularly.

These distances shown in the last four columns are distances via the Wheeling & Lake Erie.

[fol. 1316] Cross-examination.

By Mr. Orcutt:

I am the same Mr. Edward Briggs who testified for the Wheeling & Lake Erie in I. & S. Docket 2967, Lake Cargo Coal. Mr. Andrew P. Martin, counsel for the Wheeling & Lake Erie, was my counsel in that case, and he is the same Mr. Martin who appears here for the respondents.

(1586) GEORGE DURHAM, a witness previously sworn and examined, was recalled and testified further as follows:

Direct examination.

By Mr. Martin:

When I was last on the stand I was asked by the Examiner to give consideration to the question of how I estimated costs of handling ex-river coal from Wheeling & Lake Erie River division points, particularly Mingo Junc-

tion, would be affected, if, instead of using our company equipment, I used the private cars of the Carnegie Steel Company. I have given consideration to that matter and I am now prepared to state what effect that would have.

The cost per car for use of Wheeling & Lake Erie cars, Cleveland to Mingo Junction and return, one round trip, as determined from amount shown in column 7 opposite Item F, page 1 of Exhibit No. 44	$8.77
(1587) Mileage allowance for use of cars of Carnegie Steel Company, per car per round trip, Mingo to Cleveland, and return, 304 miles (Freight Tariff 7-B, I. C. C. No. 1632), at the rate of 1½ cents per mile, (Item 230, Rule 8 of Tariff, [fol. 15[illegible]] I. C. C. No. 2435, issued by B. T. Jones, Agent)	4.56
Reduction in cost per car per round trip	$4.21
Reduction on cost per net ton ($4.21 ÷ 56.6 tons)	7.4¢

By Examiner Curtis:

It is cheaper to handle coal in private cars, but I do not want to agree that we can handle them in private cars because I do not think we will have the use of those cars.

I can not get them unless they will let us have them. I would not want to say that our costs would be lower because of this statement.

By Mr. Martin:

In other words, I am not now modifying our cost study in any respect on account of this further investigation that I have made about private cars.

By Examiner Curtis:

It is true that it does so happen that many large coal companies, no matter whether situated on the river, tipple mines or on the railroad, have large quantities of their own equipment. (1588) and in that case we pay for those on a mileage basis.

By Mr. Martin:

I have heard the testimony of Mr. Saur in this case in which he commented upon and criticised my cost studies.

Since hearing that testimony I have seen and examined a copy of the transcript of his testimony. As a result of hearing that testimony and examining the transcript of the testimony I am prepared in rebuttal to make certain statements in reply to the comments and criticisms of Mr. Saur.

[fol. 1318] I will attempt to comment on Mr. Saur's criticisms somewhat in the order in which they came into the record, although that is not quite possible in every instance because there were some references to certain matters which are not quite in sequence.

To find the cost of transporting a considerable quantity of traffic, even if it is to be handled in the future, is not (1589) particularly difficult if the matter is approached in a practical way and with judgment capable of recognising the most practical and economical plan, which must be developed, for performing the service. When such a plan has been developed and adopted it is an easy matter to show how it will work.

In the performance of railway transportation service a certain number of gross ton-miles results, regardless of the commodity transported, and the cost per gross ton-mile of the road haul portion, for a given gross train load, will be the same whatever the commodity handled.

In our case we determined the most practical plan, all things considered, for handling ex-river coal from Mingo Junction to the four destinations named in our tariff and that plan or method is set forth in detail at pages 166 to 187 of the record. As there described, it will be seen that 5160 tons of ex-river coal will be transported from Mingo Junction to Brewster, 226 tons to Canton, and 2321 tons to Cleveland (as may be determined from Exhibit No. 40) in certain trains containing other freight, and, as will be seen from Exhibit No. 40, the service performed by these trains is equal to an average of 4,101 gross tons per train-mile, or an average train of 4101 gross tons.

[fol. 1319] While the number of gross tons hauled in a train may remain constant, certain service units will vary depending upon the (1590) weight of lading it is practicable to get into each car. This is true respecting such items as the number of cars, car-miles, switching service and car days. It is, therefore, apparent that as the tons of lading per car decrease there will be a substantial increase in the

cost per train on account of it being necessary to use more cars which will make more car-miles and require more switching and station service. Consequently the cost per net ton transported under these conditions will increase for two reasons: first, because of the increased total cost per train, and second, because of the decrease in the relation of the number of net tons transported to the number of gross tons in the trains; so that the cost per net ton will increase sharply for lighter loading commodities. The cost of handling one car of coal of 77 gross tons (lading being 56.6 tons and tare weight being 20.4 tons) in a train of approximately 4100 gross tons of all coal or in a train one-half of the gross tons of which, or approximately 2050 gross tons, is coal and the other 2050 gross tons constituting some other commodity or commodities will remain the same. This is so for the reason that the handling of the one-half of a train of coal in a train in which is included some other commodity or commodities will require the same number of service units, as to the coal, that will be required in the handling of one-half of a train of all coal. Inasmuch as the service units remain the same the cost will likewise remain the same, however, the cost of handling the one-half train of 2050 gross tons of some other commodity will vary [fol. 1320] according to the number of tons of lading per car of that commodity. If that commodity loads heavier than coal, such as iron ore, the cost will be less per ton as fewer cars and less attendant expenses in that regard will be required to move the 2050 gross tons.

On the other hand if the lading per car of the other commodities is much lighter than coal more cars and greater attendant expense will be required in the movement of the 2050 gross tons of such other freight. This will increase the cost per net ton of transporting that commodity as compared with the cost of transporting coal because of the greater expense involved by reason of the additional cars and service required, and the decrease in the relation of the number of net tons to the 2050 gross tons transported. Thus, while the cost of transporting the other commodity has greatly increased relatively, the cost of transporting the coal in that train has remained the same. As a practical matter coal and other commodities may be transported in the same train, but that does not change the cost

per ton of handling the coal in such a mixed train; nor does the average cost per ton of transporting various commodities in such a train become the cost of handling one individual commodity.

That being a fact, and for the purpose of simplicity, we (1592) assumed the average train of approximately 4100 gross tons to contain all coal, and proceeded to calculate the necessary number of service units for such a train. On the basis of 56.6 tons of coal with 77 gross tons per car it was found the train would contain 53 cars of coal. Upon this basis the necessary number of gross ton-miles, train-miles, locomotive-miles, car-miles, loaded cars, switch en- [fol. 1321] gine hours and days were determined. To these calculated service units were applied the average unit costs already developed for the years 1929 and 1930. Obviously the 53 cars, 4081 gross tons will contain 3000 net tons which divided into the total cost for the train resulted in a cost of 63.4 cents per net ton, to which was added a proportion of the deficit from passenger train operation, making a total cost per net ton of 64.8 cents.

Mr. Saur has referred to the average tonnage found for the various trains in which ex-river coal will be handled, and attempts to make the point that the months of June 1929, June 1930 and June 1931 are not the proper months to have selected for the purpose because of the operating ratios during those months.

The determination of average tonnage handled by these trains has no relation to operating ratios. The months of June 1929 and June 1930 were selected in order that we might obtain months in which these trains were handling relatively heavy (1593) tonnage. The month of June 1931 was selected in order that we might have representative trains which were operating currently. Apparently Mr. Saur missed the purpose for which these average tonnages have been used.

Mr. Saur refers to the rule prescribed by the Interstate Commerce Commission for separating common track maintenance expenses chargeable to accounts 202 to 226, inclusive, as between freight and passenger service on the basis of fuel issues. He states that this basis is more fair than train-miles. This has no bearing on our cost study. We have used the gross ton-mile basis which produces a

higher cost for the reason that each gross ton-mile in a train bears a uniform maintenance charge.

[fol. 1322] In this connection in my direct testimony I showed that greater fuel economy is obtained in the operation of heavier tonnage trains. The average gross tons per train-mile for all freight trains on the Wheeling & Lake Erie for the years 1929 and 1930 was 1804 as compared with 4081 gross tons per train-mile for the average train used in the transportation of ex-river coal from Mingo Junction to Cleveland, or an increase of 126.22 percent. It is, therefore, apparent that a lower charge would have been obtained by the use of the fuel basis.

Mr. Saur refers to the matter of pusher service between Mingo and Brewster and between Brewster and Gambrinus. (1594).

As stated in my direct testimony a helper engine will be required between Mingo Junction and Pine Valley, a distance of 15.8 miles, the expense of which, together with that of the light move in connection therewith has been included in the charge against the transportation of ex-river coal. Between Brewster and Gambrinus a helper is required only to Kemery, a distance of 9.6 miles, although we have included in or charged against the transportation of ex-river coal the cost of a helper for the full mileage from Brewster to Gambrinus and return, or a total of 25.2 miles, so that this helper mileage has been fully stated in Exhibit No. 40 and is reflected in the 189 locomotive-miles carried from Item 5 under the memorandum at the foot of the Exhibit No. 40 to Exhibit No. 44 and the cost applied thereto.

There is no understatement of the cost in this respect.

Mr. Saur refers to the fact that a certain amount of so-called constructive mileage is paid train and enginemen on two of the districts between Mingo Junction and Cleveland. [fol. 1323] In this connection I wish to state that the Wheeling & Lake Erie has many short runs other than those involved in the movement of this coal from Mingo to Cleveland. These consist of local freight trains, turn around runs and mine runs in road service.

For the years 1929 and 1930, the Wheeling & Lake Erie reported to the Interstate Commerce Commission in its annual (1595) report the following data:

Road Freight Conductors:

Miles actually run	3,859,949
Miles paid for but not run	1,308,669
Per cent miles paid for but not run to total miles run	33.98

Road Freight Enginemen:

Miles actually run	4,074,641
Miles paid for but not run	1,437,011
Per cent miles paid for but not run to total miles run	35.27

The unit costs determined for wages of trainmen and enginemen for the years 1929 and 1930 therefore include these heavy payments covering constructive miles paid for but not actually run, so that there is no understatement of costs in this respect.

Mr. Saur, in connection with Item 5 of block "B" and Item 6 of block "C," page 1 and 2 of Exhibit No. 44, relating to locomotive expenses, suggests that we have placed [fol. 1324] too much responsibility upon the adjustment based upon locomotive tractive effort. In my direct testimony at page 206 of the record I gave the results of a very reliable check of the appropriateness of this adjustment as relating to locomotive repairs, and as that item represents approximately 86 percent of the total of $2,220,591, there is no reason for questioning (1596) the charge made on this adjusted basis.

In discussing these items of cost he refers to wage schedules, evidently meaning enginemen. Since these items do not include any wages of engine crews wage schedules have no relation thereto.

Mr. Saur further comments upon the application of the maintenance of equipment overhead and the transportation overhead expenses through the medium of general overhead expense rather than apportioning these over the maintenance of equipment and transportation expenses. As a proportion of all overhead expenses were added to the direct cost I do not believe that any appreciable effect one way or the other would result in the final cost by apportioning these overhead items separately.

Mr. Saur has very kindly made favorable comment upon the study made in connection with the separation of wages

and salaries of station employees as between carload freight and l.c.l. freight. However, he failed to comment upon the fact that in our study we have overcharged carload freight by charging thereto all of the maintenance of freight houses, station supplies and expenses, stationery and printing, loss and damage claims, accounting and other overhead expenses rather than apportioning any part of it to l.c.l. freight.

[fol. 1325] Mr. Sauer has commented at considerable length upon our method of arriving at the unit cost for switching classification expenses and apparently endeavors to create the impression (1597) that some expense for idle time, which he terms non-productive time or non-productive service, has been omitted from our costs.

This is not the case. All of the expenses in connection with switch engines, switch enginemen and switch engine crews, including idle time, waiting time, non-productive time, etc., has been included in the unit cost shown in column (4) opposite Item E on pages 1 and 2 of Exhibit No. 44. The service units shown in column 4 opposite Item E on pages 1 and 2 of Exhibit No. 44, as determined from past operations, have been calculated on a gross engine-hour basis, and the total expense including idle time, waiting time, non-productive time, etc., is fully reflected in columns (7) and (9) opposite Item E on pages 1 and 2 of Exhibit No. 44.

Mr. Saur has commented upon the estimate of time required to perform the switching necessary in connection with the handling of ex-river coal between the transfer plant of the Carnegie Steel Company and the yards of the W. & L. E. Railway Company at Mingo Junction, Ohio, and expresses the opinion that we have not included the industrial portion of the switching, from which I understand him to mean that he thinks we have not included time for delivering empties direct to and removing loads from the Carnegie Steel Company's transfer plant.

[fol. 1326] In my direct testimony I stated very definitely and explicitly that our switching service at that point contemplated full (1598) service direct to and from the transfer plant, so that all switching service has been included. This situation was studied very carefully by competent operating officers of the Wheeling & Lake Erie Railway Com-

pany having knowledge of all the facts, and the amount of time allowed for it is ample.

Mr. Saur refers to what he terms a double barrel standard used under block F, Car Expenses, on Exhibit No. 44, and which he claims is arbitrary.

This method produces a slightly higher charge than the daily basis. The charges made for the use of freight cars are conservative at this respect, inasmuch as depreciation, etc., on unserviceable and stored cars are spread over the equipment in service.

Our reasons for using this method of determining unit costs to be used in making charge for use of freight train cars are fully explained in my direct testimony at page 199 of the record.

Mr. Sauer comments upon the separation of track maintenance as between yard tracks and other tracks, and refers particularly to Brewster Yard as being an intermediate terminal. He says the yard service at that point is susceptible of being ascertained with reasonable accuracy.

The total cost of track maintenance is reflected in our unit costs either upon a gross ton-mile basis as to road service (1599) or upon an engine-hour basis as to yard service, [fol. 1327] and since ample charge for yard service at Brewster has been made there is no understatement of the cost in that respect.

Mr. Saur makes certain comments in connection with operation of drawbridges.

As stated in my direct testimony, the expense of operating drawbridges has been assigned to yard expenses for the reason that all of such bridges operated by the Wheeling and Lake Erie are located within yards and are not used in connection with the movement of through freight trains. There is little or no probability of their being used in connection with the yard movement of ex-river coal. The assignment of this expense to yard service has the effect of increasing the charge for that service made against ex-river coal and to that extent overstates the cost.

I believe Mr. Saur made some comment on the item indicating that it spread the cost out over the line toward Zanesville. Of course, it would only spread it out to the extent that it applied to the yard service; not to road service.

Mr. Saur refers to Accounts 404 and 405—Operating Interlocking Plants and the cost of Flagmen at Street Crossings.

It is doubtless possible to separate the expense chargeable to these accounts as between the various classes of service, however, since all of the expenses in connection therewith is (1600) included by applying it on the basis of a percentage of the total operating expenses there is no understatement of the cost.

Mr. Saur makes reference to what he terms the average reciprocal switching charge at Cleveland of 13.75 cents [fol. 1328] per ton. This 13.75 cents per ton, as shown on Exhibit No. 46 does not purport to be a reciprocal switching charge but is the estimated average switching charge per net ton which would be absorbed by the Wheeling & Lake Erie Railway Company if this coal were to move to Cleveland by its lines under the proposed ex-river rates. This item, is of course, not in any sense an operating expense of the Wheeling and Lake Erie Railway Company and was used for the purpose of obtaining the operating revenue per net ton accruing to the Wheeling and Lake Erie Railway Company from the transportation of ex-river coal from Mingo Junction to Cleveland. In this connection Mr. Saur made extensive comment with respect to switching rates in Chicago but did not attempt to show that the conditions in Chicago are similar to those in Cleveland.

Mr. Saur makes reference to the handling of 1,500,000 tons of ex-river coal per year and comments upon the effect it may have upon the unbalanced traffic.

The matter of unbalanced traffic will depend to a considerable extent upon the volume of ex-lake iron ore and flux stone moving to the river district, as well as upon the (1601) possible development of additional eastbound traffic through Terminal Junction, of which there is reasonable probability.

As to empty car mileage I call attention to the fact that for the year 1929 the percentage of loaded to total car miles of the Wheeling and Lake Erie Railroad was 68.2 while for the same period it was 62.2 for the Central Eastern Region, 62.9 for the Great Lakes Region and 62.8 for the United States as a whole.

[fol. 1329] Regarding the question as to our method of calculating the cost of returning empty equipment used in the transportation of this ex-river coal as shown on Exhibit No. 44, I have already, at page 182 to 187 of the record, described the manner in which suitable empty equipment for carrying ex-river coal will be moved to Mingo Junction in regular trains and again referred to it at page 210.

Apparently a misunderstanding has arisen in this connection, at least in Mr. Saur's mind, presumably as the result of endeavoring to compare a cost calculation with a physical movement of empty cars in a manner not contemplated by me or as described in my direct testimony.

Using the return movement from Cleveland to illustrate. The return of the 53 empty cars from Cleveland to Mingo Junction, a distance of 154 miles, will produce 8,162 car-miles, which multiplied by the tare weight of 20.4 tons per car, produces 166,505 gross ton miles, exclusive of the car (1649) miles and the gross ton miles of the caboose, the mileage of which would be equal to the train miles.

In our cost study, Exhibit No. 44, the foregoing units of service are charged with the unit costs applicable and such costs included in the total cost of the train. Such items of cost in connection with the return of these empty cars as are chargeable on the basis of train miles and locomotive miles are calculated by the use of a sufficient number of train miles and locomotive miles to produce 8,162 car-miles, and 166,505 gross ton miles in the movement of a train containing 100 cars. This was found to be 82 train miles and 82 locomotive miles. There is no doubt [fol. 1330] that our cost study fully states the cost of returning these empty cars in the manner in which I have described their return.

Mr. Saur makes the statement that no evidence has been offered to show the intermediate terminal costs at Warrenton, Pine Valley, Jewett, Cambrinus and Kent.

Mr. Saur apparently is under the mistaken impression that there would be terminal service performed at these points chargeable to ex-river coal, which has not been provided for in the study. The adjustment of train tonnage at these points is performed by the train crews, i. e. the train crews make the necessary set out and pick up of

cars, so that the cost of such adjustment of train tonnage is represented in the average unit cost covering wages of train and engine crews. (1603) Mr. Maur further suggests that road haul costs might be developed by taking one, two or three trains of average tonnage and following them through the districts over which they run.

It has been our experience that accurate and representative cost can not be obtained from a study of the operation of two or three trains because of the many varying factors affecting train operation which could not be fairly measured by short period tests.

Average costs developed over a period of sufficient length of time to reflect the many fluctuations in the movement of traffic, operating, maintenance and other conditions, affecting transportation costs, is the more reliable basis of determining costs, and we have obtained and used such average costs.

Mr. Maur has expressed the opinion that on account of the physical characteristics of the line the cost of opera- [fol. 1831] tions between Mingo Junction and Cleveland will be considerably in excess of the general average of the cost of operating over the entire line, and that in using average unit costs determined from the freight operating costs of the entire line we understate the cost of the transportation of ex-river coal as shown in Exhibit No. 44.

This assumption overlooks some very important facts, such as: (1604) Obviously the cost of track maintenance per gross ton mile will not be any greater for that section of the line than the average for the entire line, and in as much as track maintenance has been charged against ex-river coal which is moved in trains of much heavier tonnage than the average of all freight trains, on the basis of gross ton-miles there can be no understatement of the cost in that respect.

Charges for train supplies and expenses have been made on the basis of car miles and would not be affected by grades and other physical characteristics of the line.

As the cost of locomotive fuel and water has also been assigned on a gross ton-mile basis there is no undercharge for that item, but, on the other hand, and as indicated in my direct testimony, there has been a substantial overcharge made against ex-river coal for fuel. This again arises from the fact that the average train here considered

exceeds in weight the average weight of all freight trains for the entire line.

The cost of locomotive repairs has been charged against the transportation of ex river coal on a locomotive mile basis adjusted to reflect the increased size of the locomotive used, so that it is evident there can be no understatement of the costs in this connection.

[Fol. 13329] Station expenses would in no wise be affected by the difficulties assumed by Mr. Saur.

(1330) The average cost of switching and classification expenses would not be affected by any of the difficulties mentioned by Mr. Saur.

The expenses covering the use of freight cars would not vary over different portions of the line.

Overhead and supervisory expenses will be the same regardless of the physical characteristics of any particular section of the line.

This would leave only a relatively small proportion of the total freight operating expenses as to which Mr. Saur's comments might relate, which would consist of the cost of dispatching trains, the wages of trainmen, and wages of train enginemen, which have been determined and applied upon the basis of train miles and locomotive miles. These expenses amount to 9.4 per cent of the total freight operating expenses. I have already referred to the fact that as to constructive mileage paid trainmen and enginemen there is evidently no understatement of costs. Certainly in the transportation of this ex river coal we have included all of the costs for the train miles and locomotive miles necessary to perform the service.

It is therefore evident that the criticisms of the cost study on account of the use of the average unit cost for the entire railroad is not justified, as there are no extreme or unusual conditions existing upon the lines of the Wheeling (1331) and Lake Erie which would distort or appreciably affect average unit costs.

[Fol. 13331] Mr. Saur comments upon our switch engine hour cost of $9.36, and states that the lowest switch engine hour cost he has developed is $12.50.

Our $9.36 per switch engine hour does not include any overhead expenses. If the average overhead percentage of 33.4 is added to this cost, a total cost per switch engine

hour of $11.55 is obtained, and accurately reflects the average cost of switch engine service on the Wheeling & Lake Erie. In Exhibit No. 44, this overhead expenses applicable to switching costs is added through the 23.4 per cent appearing item 1.

Mr. Saur has referred to our Exhibit No. 44 and stated that it is not a cost study but that it is a statistical analysis of operating costs on the whole railroad of handling all traffic. I assume that he had particular reference to the unit costs as shown in column 4 on pages 1 and 2. As has been previously explained these unit costs were determined from the total freight operating expenses for the years 1928 and 1930, and all freight operating expenses for these years have been included.

In determining unit costs for the future where average unit costs covering a reasonable period of time in the past can be obtained from statistics which are fairly representative of (1937) the conditions obtaining in connection with the service to be performed, I believe it is proper to utilize such statistics and to rely upon them, particularly as in this case where I have general knowledge of all the conditions which have prevailed over the period as to which the [fol. 1884] data applies, and am probably in a better position than anyone else to judge as to the reliance which should be placed upon the results obtained in that way.

I have already described the method and calculations by which these unit costs were arrived at and it would only be burdening the record to repeat the explanation.

Mr. Saur further says that his conception of a cost study is where an actual cost study is furnished to the commodity under review. In this instance there is no service being furnished to the commodity under review and if such a study were made I should certainly want to have it checked against just such unit cost as we are offering here before I should feel justified, as the responsible operating officer of the company, in relying upon it. Mr. Saur admittedly knows very little regarding the operating conditions over the Wheeling & Lake Erie Railroad while for some years I have been intimately associated with it and personally responsible for results which has made it necessary for me to know, not guess, what operations cost us, and during this

time the results obtained have justified us in relying upon statistics of the nature (1608) we have used in arriving at the unit costs used in the cost study shown on Exhibit No. 44.

In one part of his testimony Mr. Saur, in response to question by counsel, referred to a switching rate, or a switching cost, I am not sure which, of 25 cents per ton, and stated that it is a very low switching rate in a terminal district like Cleveland.

[fol. 1335] I assume that he meant switching rate and that he did not intend to indicate that he believed any prudent railroad management would permit an operation to continue which would result in a switching cost of 25 cents per ton in Cleveland.

I mean that as to direct operating costs which we are considering here.

However, in order that the record may be clear upon that point I desire to reiterate the statement which I have already made that our switching costs on ex-river coal in Cleveland, as reflected in our cost study were based upon an actual study of service made on the ground.

Again in response to question by Mr. Orcutt, Mr. Saur indicated that in order to apply an operating ratio, the 25 cents per ton switching rate or switching cost should be added to the 80 cents which he had previously stated "would be intended to include the same total operating expenses that this 64.8 cent figure includes." In the 64.8 cents which we have found to be the cost per ton for handling (1609) ex-river coal from Mingo Junction to Cleveland, there is included all necessary switching costs.

It would, therefore, appear that Mr. Saur not only proposes to use an absurdly high switching cost before applying an operating ratio but to add it to a suggested cost in which switching expenses have already been included. It seems unnecessary to comment upon such a procedure, as it condemns itself.

I have referred there to Mr. Saur's figure of or estimated cost of 80 cents. After having heard his testimony and re-[fol. 1336] viewed it in the form of the transcript and looked over our cost study again, in the light of mu intimate knowledge of the railroad conditions on the Wheeling & Lake Erie, I have this to say as to that 80 cents figure.

Of course, Mr. Saur admitted he was not familiar with the operations on the Wheeling & Lake Erie. He further admitted that his greatest familiarity and his cost experience had been in connection with yard operations. He did not offer any facts or even calculations in support of his suggested 80 cents, and I am sure that it is higher by the difference between the cost which we have offered and the 80 cents than is justified by the conditions and that the cost which we have found is not less than the actual.

(1610) Q. You said not less than. You meant not more than.

A. The costs we have offered were fairly representative and the actual cost will not be more than the 64.8, that is as to Cleveland.

(Narrative resumed.)

I make the same answer as to other figures shown on my cost study of 62.5 cents per ton to South Lorain, 52.3 cents to Canton and 50.8 cents to Massillon. As a result of this new study, in the light of what Mr. Saur said about my costs, I see no reason to increase any of them. I am not any less confident of their accuracy and correctness.

Cross-examination.

By Mr. Orcutt:

I referred to a tariff containing charges for the use of private equipment. (1611) I do not know whether the Carnegie Steel Company is a party to that tariff, but that is the charge we would make if we should use their cars. Because it is our published tariff. I have not recasted my [fol. 1337] study in accordance with the suggestions made by Mr. Saur to see what the final result would be. I did not understand that Mr. Saur made any suggestion that was capable of being carried out.

I would as a responsible operating officer of the Wheeling & Lake Erie in ascertaining the cost of handling any particular commodity be satisfied to use the average results of the operations of our entire railroad.

By Mr. Fitzpatrick:

I am asked in making an allowance to the Carnegie Steel Company for the use of their cars would we not in addition

provide reasonable repairs. Whatever repairs we made to the Carnegie Steel Company's cars, except damage which might be caused by derailment, accident or unfair usage, we would bill back against the Carnegie Steel Company.

(1612) If we had a wreck and had to pay for one of the cars of the Carnegie Steel Company it is not included in this cost. I am asked how about short of a wreck, where the cars are damaged by reason of rough handling. I do not know where we could draw the line. If it was obviously unfair usage, an accident, or something that did not occur in ordinary service we would have to pay for it, naturally. That is required.

Mr. Fitzpatrick: I asked Mr. Martin the other day and he very kindly furnished me with a statement showing the high and the low figures entering into the averages shown in column 4 of Exhibit No. 40. If it — agreeable to Mr. Martin and to the Examiner I should like to have the Wheeling & Lake Erie submit a statement within 10 days reproduc-[fol. 1338] ing that data in the form of an exhibit.

Examiner Curtis: Are you willing to do it?

The Witness: I am very glad to do it.

Examiner Curtis: Will it be a supplement to some existing exhibit?

Mr. Fitzpatrick: No, sir. It will be related, of course to Exhibit No. 40. It will show the high and the low figures which enter into the average under column 4 shown in Exhibit No. 40. In other words, column No. 4 shows the (1613) average gross tons carried by the Wheeling & Lake Erie from Mingo Junction to Cleveland in certain trains during a three-months' period.

Examiner Curtis: That was not what was bothering me. What is bothering me is to tie it up with something so that it can be used when we come to prepare a report. If they will be kind enough in submitting the statement to indicate the relation to a certain number of exhibits already in evidence, then we can receive it after the close of the hearing without giving it a number.

Mr. Fitzpatrick: May I say something off the record, Mr. Examiner please?

Examiner Curtis: Yes.

(Discussion off the record.)

Mr. Martin: I will read this statement into the record, Mr. Examiner. The statement is as follows:

[fol. 1339] High and Low Number of Gross Tons of Trains Shown on Exhibit No. 40, relating to Transportation of Ex-river Coal Mingo Junction, Ohio to Cleveland, Ohio.

	High	Low
Mingo-Warrenton—		
1/85	3,140	440
Warrenton-Pine Valley—		
Ex. Swing Run	1,789	25
1/85	2,974	535
(1614) Pine Valley-Jewell—		
1/85	3,500	175
2/85	2,952	207
Jewett-Brewster—		
2/85	3,336	609
1/85	7,169	950
Brewster-Gambrinus—		
191	5,636	1,342
195	6,667	905
Gambrinus-Kent—		
191	3,882	222
195	5,237	1,257
Kent-Cleveland—		
191	3,651	172
195	4,068	1,039

[fol. 1340] (Narrative resumed.)

By Mr. Fitzpatrick:

Up until now I have assumed the responsibility for the measure of the particular rates that have been proposed. I will also have to assume responsibility for the minimum weight of 25 tons per car which is proposed. It is in the tariff.

As to whether it is the wish of the Wheeling & Lake Erie Railroad that is as to any cars of coal (1615) offered on the ex-river rates which contain 50,000 pounds, our company wishes that the rates be applied to the actual weight transportation. The tariff so reads. As a practical matter, that would not work out that way, of course.

It is not the wish that the ex-river coal should be loaded only to 25 tons or 50,000 pounds. That is not the expressed wish of the Wheeling & Lake Erie.

By Mr. Fitzpatrick:

It is not a desire to apply the ex-river rates at the actual weight. That is a provision in the tariffs. If cars are offered at that weight we will have to accept them as long as that tariff is in existence. We would have to apply the actual weight in paying the charges. (1616) That is not actually what we want. That is not what we expect to get as a practical matter. Our average load on cars is 56.6 tons. I have no doubt that average will be maintained on any ex-river coal which we handle.

[fol. 1341] As to whether we are not going to make certain that it will be maintained by making that the minimum weight, we might wish to do that if we find our minimum weight is being abused. The necessity for that has not arisen. If it does we will provide for it.

Q. As to cars loaded with 52,000 pounds, based on your own theories, and your own study, and assuming them to be correct, for the purposes of this question, you believe your study correctly portrays the operation costs incident to handling that traffic?

A. If a car were loaded to only 52,000 pounds the cost of handling the coal in the car would be more than the cost we have given here. Undoubtedly, that following from what I have said.

Redirect examination.

By Mr. Martin:

There is not anything in my knowledge of the (1617) situation or my experience that leads me to think that the loading of these cars of ex-river coal is ever as low as 52,000 pounds in practice. It is my opinion that the loading will be the maximum tonnage of the car whatever it will carry. It will be loaded full.

Examiner Curtis: Are there any on the part of the protestants?

Mr. Orcutt: I believe not. I might say, Mr. Examiner, when Mr. Morris was on the stand Mr. Martin wanted him to furnish certain figures and I believe he said he would if he could get them, and forward them in a letter. I have just received from Mr. Morris a letter, apparently written

and signed by him, and addressed to Secretary McGinty of the Commission, dated September 24, 1931. He has asked [fol. 1342] us to file it with the Commission. There is a copy here. I do not know whether you want the original and a copy. He did not send more than one copy. We will have extra ones made if necessary.

(1618) Examiner Curtis: Let Mr. Martin for the respondents see it and if it is short and you want to admit it we will read it into the record.

Mr. Orcutt: Yes, sir. (Handing letter to Mr. Martin.)

Mr. Martin (After reading letter): Mr. Examiner we will not be content with this letter. It does not furnish us the information which enables us to get anything like a practicable check on this 9 cent figure which Mr. Morris gave to us in his direct testimony.

(After discussion, transcript pages 1618-1621, the following occurred:)

(1622) Examiner Curtis: There is in this record testimony of Mr. Morris for the Weirton Steel Company, a private concern. There is in this record a request for certain information to be furnished by Mr. Morris, requested by Mr. Martin, counsel for respondents, and here is the letter, stating as follows:

"Weirton Steel Company,

Grant Building

W. F. Morris, Jr., Pittsburgh, Pa., Vice President.

September 24, 1931.

"Honorable George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

"Dear Sir:

"Referring to I. & S. Docket 3619, involving rates on ex- [fol. 1343] river coal from W. & L. E. stations to Canton, Massillon, Cleveland, and Lorain, Ohio: The writer testified in the above case on Monday, September 21, and the following information was requested by the Commission:

The item of 31 cents, covering the towing from f. o. b. mine to f. o. b. dock, is made up as follows:

Towing	.22
Depreciation	.052
Repairs	.008
Interest on Investment	.03

The item "Interest" is based on the average (1623) tonnage per year, figured on a valuation of $422,000. Insurance on barges is paid by the towing company as part of their expense. We do not carry any insurance on cargoes. The necessary structural repairs are made at the expense of the towing company. The minimum rate is 22 cents, and the maximum 23 cents. All of the above quotations are on a net ton basis.

Yours very truly, W. F. Morris, Jr., Vice President."

COLLOQUY

The record will show that Mr. Martin, counsel for respondents, objects to the receipt of this letter on the ground that it is not responsive to his request for information, and he further objects to its receipt on the ground that the witness is not here for cross-examination. There was no understanding that he would be here. There was an understanding that he would file a letter that would furnish the information Mr. Martin sought when he was on the witness stand on Monday last.

Counsel for the protestant, Pennsylvania Railroad Com- [fol. 1344] pany, Mr. Orcutt, merely tenders the letter for what it is worth.

Mr. Orcutt: At the request of Mr. Norris.

Examiner Curtis: At the request of Mr. Norris, and he is not introducing it as a part of the protestants' case, but merely to furnish the information which Mr. Martin rejects as (1624) proper evidence in the proceeding.

The ruling of the examiner is that the letter will be made a part of the record for whatever it is worth.

(Mr. Martin moves to strike the testimony of Mr. Morris given on Monday last, together with this letter, be stricken from the record on the ground that he has been denied the privilege of cross examination of Mr. Morris, and that the information which he sought to supply in lieu of cross examination is not the complete information which he requested.)

(After discussion, transcript 1624, the following occurred:)

Examiner Curtis: I think the record shows all of that. It also shows that he was here and was subject to cross examination up to a certain point. Up to that point his testimony is regularly in the record and ought not to be objected to.

(1625) Now, we come to this matter here which I have deliberately read into the record, with the recital of all the attending facts and circumstances concerning it. I am going to let it stay in the record. I am going to make this comment, that it can have but little, if any probative value [fol. 1345] in submitting the 31 cents cost figure put in by Mr. Morris. But, at any rate, the evidence, so far as it is complete, conforms to the rules of evidence as to the right of cross examination, and will stay in the record. That is the only thing the Examiner can do to cover the situation.

Mr. Martin: May I have an exception, Mr. Examiner, on the ground that I still feel that I have been denied the right of cross examination.

Examiner Curtis: The Examiner grants that to be a fact as to the information contained in the letter, but not as to the other matters concerning which Mr. Morris testified to before you asked him about this.

Now, the question is whether or not you want to close your record or want to go to work and continue this case until the first of the week and bring him here and put him on.

Mr. Martin: In view of the length to which this case has already gone, Mr. Examiner, I do not feel that I would be justified in imposing that additional burden of holding the case open until next week upon those of us that are present here now. Therefore, I will not ask for that privilege (1626) without, however, in any way waiving I have said heretofore.

Examiner Curtis: I think your rights are fully protected in the way in which I have handled this matter and [fol. 1346] I might suggest to counsel that the Examiner has accepted all information that was tendered respecting what it might cost the shipper who was to have river transportation for the towing of coal in barges.

Is there anything else that you want to cover?

Mr. Orentt: There was a ruling on Exhibit 116. Should I tender that again or is my original tender sufficient?

Examiner Curtis: The original tender is sufficient. The exhibit will be admitted in evidence for whatever it is worth and Mr. Martin will have an exception.

Mr. Martin: I do not care to take an exception to that in view of Mr. Briggs' testimony correcting the exhibit. As I understand it, the exhibit as received with the corrections made by Mr. Briggs, is now unobjectionable to me.

Examiner Curtis: Very well. The exhibit is received without qualification.

Mr. Martin: Subject, of course, to the corrections made by Mr. Briggs orally.

(Protestants' Exhibit No. 116, received in evidence.)

(Fol. 1347) (1027) Mr. Martin: Except this, Mr. Examiner, it now occurs to me that Mr. Kern was to secure from the lines which furnished him information for his Exhibit 111, and furnish for the record the component figures relating to the total coal tonnage, the total traffic, the total revenue and the coal revenues of the lines there shown, for the calendar years of 1929 and 1930.

Mr. Orentt: That was bituminous coal.

Mr. Martin: Yes. It was bituminous coal and I have a letter at the hotel from Mr. Kern or a copy of his letter, to some of these railroads asking for that information. I presume that will be supplied by Mr. Kern directly or to me for transmittal to the Commission as soon as he receives it and files it.

Examiner Curtis: Let the record show that that information will be received in evidence within 15 days from the date of the conclusion of this hearing.

(Thereupon, 4:15, the hearing of the above entitled matter was closed.)

[fol. 1348] In United States District Court

Narrative of Evidence Before the Interstate Commerce Commission Filed Nov. 17, 1934

Coal, Bituminous, Ex River, from Colona and Conway, Pa., to Youngstown, Ohio

I. & S. No. 3282

Ex-Ohio River Coal to Cleveland, Lorain and other Ohio Points

I. & S. Docket No. 3619

Before Examiners R. N. Trezise, E. A. Burslem and C. E. Simmons

Appearances of Counsel

The same as heretofore noted, with the following additions:

Messrs. Henry C. Hall and Alexander M. Bull, 716 Jackson Place, Washington, D. C., and Mr. F. E. Siepert, 30 Rockefeller Plaza, New York, N. Y., appearing for Robert C. Hill, et al., Receivers, The Consolidation Coal Company.

Mr. August G. Guthelm, 712 Jackson Place, Washington, D. C., appearing on behalf of Western Pennsylvania Coal Traffic Bureau and the Youngstown Sheet & Tube Company. (2)

Mr. George A. Blackford, 500 Board of Trade, Wheeling, W. Va., appearing on behalf of Wheeling Coal Company, Wheeling Valley Coal Corporation and Constanzo Transportation Company.

Messrs. A. C. Graham and W. H. Welsh, Youngstown, Ohio, appearing on behalf of Youngstown Sheet & Tube Company, and Mr. J. C. Argetsinger, Youngstown, Ohio, appearing on behalf of Youngstown Sheet & Tube Company and Youngstown Chamber of Commerce.

Testimony taken at Washington, D. C., June 26, 1933

Roy S. Kern was called as a witness, and having been duly sworn, testified as follows: (3)

Direct examination.

By Mr. Orcutt:

I am the same Roy S. Kern who testified in I. & S. Docket [fol. 1349] 3619. Since giving testimony at the original hearing of I. & S. Docket 3619 I have made further investigation of the ex-Ohio River rates and the movement of coal thereunder and the general commercial bituminous coal rate structure in the territory involved, and have prepared a statement of the evidence I desire to offer in this proceeding. (6)

These cases, I. & S. Docket 3282, Coal, Bituminous, Ex-River from Colona and Conway, Pa., to Youngstown, Ohio, 163 I. C. C. 3, and I. & S. Docket 3619, Ex-Ohio River Coal to Cleveland, Lorain and other Ohio points, 185 I. C. C. 211, were reopened by order of the Commission dated May 8, 1933, upon further consideration of the original record in the cases and upon consideration of petitions of the B. & O., C. & O., Erie, Monongahela, New York Central, N. Y. C. & St. L., N. & W., Pennsylvania, P., C. & Y., P. & L. E., Western Maryland, Virginian, and P. & W. V. companies for reopening, reconsideration and rehearing. My testimony shall be for and in behalf of all of the petitioning railroads.

As a preface to the evidence I am about to offer, it seems pertinent that I give a brief history of these ex-river coal cases. By the term "Ex-River coal" is meant coal loaded at mines direct into river barges and transshipped via water to rail transfer points and there loaded into (7) railroad cars for movement to final destination. I. & S. Docket 3282 developed after the filing of tariffs by the Pennsylvania Railroad and Pittsburgh & Lake Erie [fol. 1350] Railroad naming rates on ex-river coal from Conway and Colona, Pa., respectively, to Youngstown, Ohio, of $1.02 per net ton in pursuance of their proposals as made in the proceeding "Construction of Branches by Pittsburgh, L. & W. R. Co.," 155 I. C. C. 43, and 150 I. C. C. 619. These tariffs were suspended, and following hearings the Commission found that the rate proposed had not been justified and ordered cancellation of the tariffs without prejudice to the filing of new schedules naming 77 cents per net ton from both Conway and Colona to Youngstown and points grouped therewith, including

Warren, Ohio. In reading this conclusion, however, the Commission stated, at page 13 of the report:

"It clearly appears that if rates are to be established on this Ex-River Coal which will induce its free movement from the river mines to Youngstown and points grouped therewith, they must not be any higher than the level of all-rail rates from the same general producing districts and that any Ex-River rate which may be established must afford a basis for subsequent establishment of rates from Conway and Colona to Cleveland, Canton, Toledo and other large consuming points; * * * otherwise undue prejudice may be created." (8)

I. & S. Docket 3619 developed from the filing by the Wheeling and Lake Erie Railway of rates on ex-river coal from stations on its River Division, viz., Brilliant, Martins Ferry, Mingo Junction, Rush Run, Salt Run, Steubenville, Stringer, Terminal Junction, Tiltonville, Warrenton and Yorkville, Ohio, to Canton and Massillon, Ohio, of 95 cents per net ton and to Cleveland, Lorain and South Lorain, Ohio, of $1.10 per net ton. In this instance the Commission found that the rates proposed had not been justified and required the cancellation of the suspended schedules without prejudice to the filing of new [fol. 1351] tariffs naming rates of $1.02 per net ton to Canton and Massillon, and $1.27 to Cleveland, Lorain and South Lorain.

In arriving at this conclusion, the Commission stated, at page 221 of the report:

"We are of the opinion that the Wheeling's Ex-River rates should not be on a level which would result in barge-rail rates from the Pittsburgh, Connellsville and Fairmont Districts to the considered destinations lower than the barge-rail rates based on 77 cent rate to Youngstown under the findings in the Youngstown Case, I. & S. 3282, plus existing all-rail differentials to the same destination. Such a basis would result in rates of $1.27 from the Wheeling's River Division to Cleveland, Lorain and South Lorain, and $1.02 to Canton and Massillon. * * * Considering (9) the differences in distances, these rates would be properly related to the 77¢ rate approved in the Youngstown case."

In my discussion of I. & S. Docket 3282, I quoted the language of the Commission indicating its desire to create

an ex-river rate structure competitive with and not prejudicial to the all-rail rate structure.

In the report in I. & S. 3619 at page 219, the Commission expressed the same thought, as follows:

"To upset or seriously to menace a general rate structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful."

Having in mind these findings and conclusions on the part of the Commission, and with a view to correcting the present rate situation, which experience has shown unduly favors the movement of ex-river coal and has forced reductions in the all-rail rate structure, which as a whole was found reasonable in this Commission's recent decision in Docket 25566 and related cases, Intrastate Rates on Bi- [fol. 1352] tuminous Coal within the State of Ohio, 192 I. C. C. 413, the carriers sought further hearings in both I. & S. 328a and 3619 and are now prepared to suggest rates in lieu of those recommended by the Commission in the reopened cases, which in the judgment of the carriers will protect the all-rail rate structure without prejudice to the rail and river routes. (10)

Specifically those carriers, through me, ask that the 77-cent rate now published from Conway and Colona to Youngstown and other points in the Mahoning and Shenango Valleys taking the same rate be increased to $1.01 per net ton; that rates from Conway and Colona to Canton and Massillon be increased from $1.02 (which, it will be noted, reflects the Pittsburgh District all-rail differential Canton and Massillon over Youngstown of 25 cents added to the proposed Conway-Colona ex-river rate to Youngstown) to $1.26, which reflects the same Pittsburgh District all-rail destination rate differential; that the ex-river rates from Conway and Colona to Cleveland and Lorain be increased from $1.27 net ton (which reflects the Pittsburgh District all-rail differential Cleveland over Youngstown rate) to $1.51 net ton, which reflects the same destination rate differential added to the ex-river rate here proposed from Conway-Colona to Youngstown.

From points on the Wheeling & Lake Erie Railway River Division, as well as competitive points on the B. & O. Railroad and the Pennsylvania Railroad, including Bridgeport,

West Wheeling, Mingo Junction, Steubenville, and perhaps other points, it is our suggestion that the present ex-river rate therefrom to Canton and Massillon of $1.02 per net [fol. 1353] ton be increased to $1.26 per net ton, which is the (11) rate from the No. 8 District to Canton and Massillon required to be published in this Commission's decision and order in Docket 25566 and related cases, Intrastate Rates on Bituminous Coal within the State of Ohio, 192 I. C. C. 413. It also is the same as the rate here proposed from Conway and Colona to Canton and Massillon.

From the Wheeling & Lake Erie Railway River Division points and points on other roads taking the same rates, we believe the ex-river rates therefrom to Cleveland and Lorain should properly be increased from $1.27 to $1.74, the No. 8 District to Cleveland-Lorain rate, which the decision in Docket 25566 required as to the all-rail intrastate rate.

I shall content myself at this time with the statement that the suggested rate of $1.01 from Conway and Colona to Youngstown is, in the judgment of the carriers, a reasonable and proper rate and is on a level consistent with all-rail rates in the same territory, which this Commission in many cases has found to be just and reasonable. The proposed rates from Conway and Colona to Canton, Massillon, Cleveland and Lorain similarly reflect a reasonable level consistent with rates in the same territory, because they were constructed by adding to the Conway-Colona to Youngstown proposed rate the same destination differentials as are used to make up the through all-rail rates from the Pittsburgh District to Cleveland and Lorain (12).

The suggested rates from the Wheeling & Lake Erie Railway ex-river points, as well as those of other lines in [fol. 1354] the same vicinity, are on the Ohio No. 8 District basis as contemplated by this Commission's decision and order in the Ohio Intrastate Case previously referred to. I shall subsequently show that these ex-river points are actually within the confines of the Ohio No. 8 origin group; in fact, coal mines are situated within the switching limits of some of these points, and such take the Ohio No. 8 basis of rates to all points of destination where origin groups are observed.

Before introducing the exhibits I have prepared in support of the rate changes suggested, I desire to definitely state that in suggesting ex-river rates equal to all-rail

rates for corresponding distances or transportation services, the carriers, for whom I speak, appreciate that they are departing from the principle apparently used by the Commission in its original decisions in these cases which fixed the ex-river rates as "in the nature of proportional rates," and as such made them on a somewhat lower basis than the all-rail adjustment. It should be understood, however, that these carriers throughout the original hearings advocated ex-river rates made to reflect the all-rail level and our present position is, therefore, in principle consistent with the former policies of these carriers (13).

I shall subsequently present in detail the facts upon which the carriers rely in advocating the rates I have named. At this time it shall suffice to state that because of governmental subsidies the costs of transporting freight on the Allegheny, Monongahela and Ohio Rivers are now so low that the carriers need not and should not be required [fol. 1355] to publish any lower basis of rates from a river trans-shipping point than they do or would from a coal mine.

The aim of the Commission when it prescribed the ex-river coal rates and the failure to carry out this intention is well stated in the following language from pages 433 and 434 of the Commission's decision in Docket 25566 heretofore mentioned:

"The differences between all-rail and rail-and-water rates in many instances are too great. * * * Any increase, however, should be sufficient only to permit mines restricted to all-rail routes to compete with those having river outlets in order to maintain rail and water rates on a level which will induce the free movement of coal by barge and encourage and develop water transportation in furtherance of the policy declared by Congress in Section 500 of the Transportation Act."

Although the Commission in its report in Docket 25566 fully explained the all-rail rate structure, found it to be reasonable, and in the foregoing quotation admitted that (14) the existing ex-river rates constituted a menace to such all-rail rate adjustment, I feel that this record would not be complete without a more or less detailed description of the all-rail adjustment.

My first exhibit, F-1, is a map upon which are shown the origin groups known as Fairmont, Connellsville, Pitts-

burgh, Ohio No. 8, Cambridge, Middle-Coshocton and Massillon, which are circumscribed by black lines and light blue shading, and the destination groups known as Youngstown or the Mahoning and Shenango Valleys, Canton-Massillon, Akron, Mansfield, Cleveland, Norwalk, Marion, Toledo, Warren and Buffalo groups, which are circumscribed in red. A dotted blue line is shown extending southwardly and southwestwardly from Lake Erie at Sandusky to the [fol. 1356] Ohio-Indiana State Line just north of New Paris, Ohio, and Richmond Junction, Ind. This is the so-called Sandusky-Galion Line dividing affected territory and non-affected differential territory east thereof.

I shall have more to say about the territory west of the Sandusky-Galion Line in connection with subsequent exhibits and shall limit my explanation of the rate situation depicted upon Exhibit F-1 to the territory east of the line, which, with the exception of Canton, Massillon and Akron groups, is known as non-affected differential territory east of the Sandusky-Galion line (15).

(Respondents' Exhibit F-1, Witness Kern, received in evidence.)

As an aid to a proper understanding of this rate situation, I would like to introduce my Exhibit No. F-2, entitled "Statement of Present Rates on Bituminous Coal from Ohio No. 8, Cambridge, Middle, Massillon, Pittsburgh, Connellsville and Fairmont Districts to representative destinations in the various Rate Groups," appearing upon Exhibit F-1.

(Respondents' Exhibit F-2, Witness Kern, received in evidence.)

It should first be noted that the coal originating groups constitute a continuous chain or series extending from the Massillon District on the northwest to the Fairmont District in northern West Virginia. Due to the proximity of these districts one to the other, the rate structure obtaining from them, particularly to northern Ohio, northwestern Pennsylvania and western New York, is one of inter-relationships reflected by both origin and destination differentials.

[fol. 1357] The map also shows by means of red stars the points on the Ohio River from which the ex-river rates

here in issue are published. It is to be observed that Conway and Colona are situated geographically about one-half the distance between the northern boundary of the Pittsburgh origin group and the southern boundary of the M. & S. Valleys destination group (16).

The other ex-river trans-shipping points, which include Steubenville, Mingo Junction, Martins Ferry and Bridgeport, are all within the Ohio No. 8 District, and directly across the Ohio River from the western end of the Pittsburgh District, which sometimes is referred to as the Moundsville District in the Panhandle of West Virginia. The destinations to which ex-river coal rates are now published, viz., Youngstown, Warren, Canton, Massillon, Ceico, Cleveland, Lorain and South Lorain, are indicated upon the map by means of blue stars.

The fact that the ex-river coal shipping points and all of the destinations to which ex-river coal rates now apply are near or within the coal originating districts, and the destination rate groups appearing upon the map indicates the necessity for the existence of a common or relative rate level on both all-rail and ex-river coal. This situation is accentuated by the fact that all of the coal which can move on the ex-river rates is produced at mines on the Ohio, Allegheny and Monongahela Rivers within the No. 8, Pittsburgh, Connellsville and, to a lesser extent, the Fairmont, Districts. All of the mines situated on the river and equipped to ship via barge, which are commercial as distinguished from captive mines, are also equipped to ship via rail. There are few captive mines without rail connec- [fol. 1358] tions, but these are owned or controlled by industries with (17) plants on the rivers and normally ship no coal beyond the river points at which their plants are located.

From a rate standpoint, the territory covered by the map, Exhibit No. F-1, is divided into three sections. The first is the Toledo Group, which is a part of affected territory and will be discussed in conjunction with a later exhibit; the second territory extending from the Sandusky-Galion Line east, to and including Erie, Pa., and the eastern boundary of the Cleveland Group, and the third includes the Warren and Buffalo Groups.

Dealing first with the Middle territory, within which all of the ex-river coal destinations are located, we have an all-rail rate structure which has for its base or key rate

that of $1.34 from the Pittsburgh District to Youngstown or Mahoning and Shenango Valleys Group. This rate was so recognized by this Commission in I. & S. 774 Bituminous Coal to Central Freight Association Territory, 46 I. C. C. 66 when, at page 73 of that decision the Commission said:

"After the hearing in the original cases and while they were still pending, the Commission promulgated their report on supplementary hearing in the 5% Case, 32 I. C. C. 325 and 331, and in which it referred to the rate on Bituminous Coal from the Pittsburgh District to Youngstown, Ohio, as the 'key' rate."

The Pittsburgh to Youngstown rate was first before the (18) Interstate Commerce Commission in Docket 4606, Youngstown Sheet & Tube Company v. P. & L. E. R. R., 29 I. C. C. 128, decided February 3, 1914, when the then ex-[fol. 1359] isting rate of 70 cents per net ton was found reasonable. Later, in the case I. C. C. Docket 12774, Republic Iron & Steel Company v. B. & O. Railroad et al., 83 I. C. C. 429, decided October 18, 1923, the Commission found reasonable the then existing rate from Russelton, Pa., a point within the Pittsburgh District, as shown upon this map exhibit, to Youngstown, Ohio, of $1.50 per net ton.

The last case in which the Pittsburgh District to Youngstown rate was in issue was Docket 25590, Western Pennsylvania Coal Traffic Bureau et al., v. A. C. & Y. Railway et al., the decision in which was embraced in Docket 25566, Intrastate Rates on Bituminous Coal within the State of Ohio, 192 I. C. C. 413. Here again the Commission found the rate proper. At page 418 of this report the Commission said:

"The Pittsburgh-Youngstown rate has some times been referred to as the 'key' rate in the adjustment to northeastern Ohio, on which the Pittsburgh District rates to this territory have been built,"

and cited I. & S. 774.

Rates from the Connelsville District, immediately south of the Pittsburgh District, to the Mahoning and Shenango Valleys are made differentially 8 cents over Pittsburgh, (19) and the rates from the Fairmont District, immediately south of the Connellsville District, are 16 cents per ton over Connellsville, or 24 cents over Pittsburgh. The Ohio No. 8 District, although its distance to the Mahoning and She-

nango Valley is slightly in excess of Pittsburgh, is accorded the same rate as Pittsburgh because of its relative location with Pittsburgh and the competition as between producers [fol. 1360] of coal within the groups. Rates from the Middle District to Mahoning and Shenango Valleys are usually the same as the No. 8, although there are instances where a 10-cent differential under No. 8 is observed. The Massillon District takes the same rate as the Middle District, and the Cambridge District 10 cents over No. 8.

On this map the destination rate groups reflect the rate situation as it obtains from the Pittsburgh District, because the rates from the Pittsburgh District can be said to control the adjustment in the sense that they are usually treated as the base rates. The destination groupings from other districts differ at times from those observed in the rates from Pittsburgh, and I shall subsequently point out certain of the more important departures from the boundaries upon the map.

Because, however, these proceedings do not involve destination rate groups as such, my thought in concentrating upon one map the rate situation which is specifically correct from (20) Pittsburgh, Connellsville and Fairmont, and generally correct from the other districts, was that it would be more helpful and understandable than a series of maps which would show the exact situation from each origin district.

Next to the Pittsburgh-Youngstown rate in its importance in this adjustment is the Pittsburgh to Cleveland rate of $1.84 per net ton, which is blanketed along the south shore of Lake Erie from Lorain, Ohio, to Erie, Pa., inclusive, and extends south thereof. Aside from the important position it holds in the immediate territory of which I am now speak- [fol. 1361] ing, the carriers used the original rate, namely, that in effect immediately before July 1, 1917, of $1.00 per net ton as the basis for the Hocking District to Toledo, Ohio, rate, which in turn became the key rate to the entire C. F. A. affected territory adjustment. This fact is alluded to by the Commission in its decision in I. & S. 774, 46 I. C. C. 66, at page 81, and again by the Commission at page 418 in its recent decision in Docket 25566.

At the present time the Pittsburgh District to Cleveland rate of $1.74, reflects a destination differential of 50 cents

a net ton over the key rate of $1.34 from Pittsburgh District to Youngstown. To Cleveland and the Cleveland rate group, rates from the Connellsville District are made differentially 6 cents over Pittsburgh, and Fairmont is made 9 cents over Connellsville, or 15 cents over Pittsburgh. (21)

From the Ohio No. 8 District to that part of the Cleveland Group, Cleveland and west, rates are made differentially 10 cents under Pittsburgh, whereas to points within the group east of Cleveland, where distances from the No. 8 and Pittsburgh District are approximately the same, the No. 8 rate is the same as Pittsburgh.

The Cambridge District to this group is accorded the same rates as No. 8, the Middle District a differential of 20 cents under No. 8, and the Massillon District the same rate as the Middle District. These are the differentials as they obtain at Cleveland, and there are certain exceptions elsewhere in the destination group which it does not seem necessary here to relate.

[fol. 1362] The third important destination group in this adjustment is that obtaining to Canton and Massillon, Ohio. From the Pittsburgh District to these points the existing rate of $1.59 per net ton resulted from the decision of the Commission in Docket 8899, Canton Chamber of Commerce v. P. R. R., et al., reported first in 56 I. C. C. 293, and on further hearing in 62 I. C. C. 726.

This was a Section 3 proceeding ,in which the issue was the destination relationships between the Pittsburgh and Connellsville District rates to Canton versus rates to Youngstown and Cleveland. The Commission, in effect, decided that rates to Canton from the Pittsburgh District should reflect (22) the relationship of one-half of the differential between the Pittsburgh to Youngstown and Cleveland rates; in other words, at the time of the decision the rate from the Pittsburgh District to Youngstown was $1.10 and to Cleveland $1.50, a difference of 40 cents.

As a result of the decision, the Canton rates were fixed at $1.30; viz., 20 cents over Youngstown, and 20 cents under Cleveland. At the present time the differential Cleveland over Youngstown, as I have previously stated, is 50 cents per ton. The Pittsburgh District rate to Canton is $1.59, reflecting a differential of 25 cents over Youngstown and under Cleveland.

As will be noted in subsequent exhibits which I have to offer, the actual result of the decision in Docket 8899 was a 10-cent reduction in the rates to Canton, Ohio, and because [fol. 1363] Canton and Massillon are customarily accorded the same rate basis, this reduction was extended to include the latter point. From the Connellsville District rates to Canton and Massillon reflect an origin differential relationship of 6 cents per net ton over Pittsburgh.

From the districts within Ohio, the rate situation to Canton and Massillon differs somewhat from the foregoing, due to the proximity of the eastern Ohio origin districts to Canton and Massillon, the former being within the Middle District, and the latter within the Massillon District, origin differentials are not recognized and the adjustment may be (23) characterized as a local adjustment in which origin and destination groupings are maintained except for the extremely short hauls, and which coincides as to the rate levels and the recognition of the elements of competition with the differential interstate adjustment from the Pittsburgh, Connellsville and Fairmont Districts as previously explained.

The group rates which this Commission in its decision in Docket 25566, previously referred to, required to be reestablished were to Canton and Massillon from the Middle and Massillon Districts $1.01, and from the No. 8 District $1.26. The rate of $1.26 now existing from the Cambridge District was, as the result of customary rate policies, made on the No. 8 basis and was not involved in Docket 25566. Rates to the Akron Group are as to relationships much the same as to Canton and Massillon in that the interstate adjustment reflects fixed origin differentials, whereas the Ohio intrastate rates do not, but are made on a level relative to the interstate adjustments.

[fol. 1364] To the Mansfield and Norwalk Groups, origin differentials are generally maintained form all of the origin districts upon the map. Rates to all of these groups were specifically in issues in Docket 25566, and the adjustment as it existed prior to the reductions on Ohio intrastate rates (24) effective August 1, 1932, specifically approved. Because, however, no ex-river rates are published to any points in these groups, it does not appear necessary that the rates be explained in the same detail as in the instance of other destination rate groups with which I have dealt.

The Buffalo and Warren Groups, the western parts of which appear in the extreme northeastern portion of the exhibit, constitute a rate adjustment somewhat different than that existing west of these groups, and, although the rates reflect a level substantially the same as and consistent with the territory Erie, Pa., and west, the origin relationships vary, principally because the rates from the origin districts shown upon the map are related to a different base group, namely, the Reynoldsville District, from which the movement of coal is northbound and eastbound, rather than westbound.

The Reynoldsville District is situated generally northeast of the Pittsburgh District, and its location may be more definitely ascertained by noting on the map the stations, Iselin, Kent, Indiana, Sagamore, Yatesboro and other points in the vicinity which are shipping points in the Reynoldsville District. Originally and until the decision of this Commission in the National Petroleum Association v. Rail- [fol. 1365] roads Case, 163 I. C. C. 625, rates to the area comprising both the Buffalo and Warren Groups were the same as Buffalo. (25) Effective August 11, 1930, and in pursuance of that decision, the Warren Group was created on a basis generally 19 cents per ton less than the Buffalo Group. The basic Reynoldsville District rate to Buffalo is now and has been since the 10 per cent reduction of July 1, 1922, $2.09 per net ton. Rates from the Pittsburgh District are made differentially 15 cents over, and from Connellsville District and that part of the Fairmont District situated generally north of Fairmont, W. Va., the rates are made 15 cents over Pittsburgh.

From all of the eastern Ohio districts, viz., Massillon, Middle, No. 8 and Cambridge Districts, the same rates are published as from Pittsburgh. The existing rates as reflected by these differentials are: Reynoldsville, $2.09; Pittsburgh and eastern Ohio, $2.24; Connellsville and the northern part of the Fairmont District, $2.39.

At this time I want to cite I. C. C. Docket 13560, Lackawanna Steel Company et al. v. Director General as Agent, Pennsylvania Railroad Company, et al., 87 I. C. C. 323, in which this Buffalo rate and the differentials between the origin groups were specifically found proper.

In addition to the importance of the Buffalo adjustment from the standpoint of tonnages consumed in that indus-

trialized area, the Buffalo rate is used as a proportional rate [fol. 1366] on shipments of coal to Canada and is further published as a proportional rate via across Lake Erie car ferries to such (26) north shore points as Port Maitland, Port Stanley and Erieau, Ont. The movements of coal from all of the origin districts with which I am here dealing is very substantial.

This concludes the description of the particular all-rail adjustments which the Commission intended to protect. It is the keystone of the larger C. F. A. adjustment which I shall now describe.

Exhibit No. F-3 is a map showing the rate situation as it exists from the Ohio districts and the Inner and Outer Crescents to C. F. A. affected and non-affected territories.

(Respondents' Exhibit F-3, Witness Kern, received in evidence.)

In connection with Exhibit No. F-1, I referred to and described in part the Sandusky-Calion line which circumscribes affected territory. On this map it appears more plainly as a he-vy dotted red line. The rates appearing within the several destination groups shown on the map are those now obtaining from the basis Ohio Districts, namely, No. 8, Cambridge, Hocking and Pomeroy. From the Inner Crescent Districts, which are shown on the exhibit in pink, rates to affected territory are made differentially 50 cents over the basic Ohio Districts, and from the Outer Crescent Districts, which are to the south and southeast of the Inner Crescent and are shown in gray, rates to affected territory are made differentially 25 cents over the Inner Crescent, or 75 cents over Ohio. (27)

[fol. 1367] To non-affected territory, which comprises the destination rate to groups appearing on this map outside of the dotted red line, the origin differentials vary and are specifically shown in the legend at the upper righthand corner of the exhibit. This rate adjustment in its entirety first came to the attention of this Commission in I. & S. 774, Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, to which I have previously referred.

As a result of that decision the Commission adopted the general principles upon which the rate structure was made by the carriers and approved it generally. Briefly, the base rate was and is the Hocking or basic Ohio districts to

Toledo which, as I have previously explained, was made the same as the Pittsburgh to Cleveland rate, and is now $1.89 per ton, or 5 cents higher than the Pittsburgh to Cleveland rate. This relationship between the important Pittsburgh to Cleveland rate on the one hand and the Ohio districts to Toledo rate on the other hand, forms an inseparable connecting link between the rate adjustment into northwestern Ohio and affected territory, and the adjustment into northeastern Ohio, which is termed non-affected differential territory.

Without going into a great deal of detail in explaining this adjustment, I desire to call attention to the many times it was before this Commission. First it was considered (28) in I. & S. 774, previously cited; then in the Ohio-Michigan Coal Cases, 80 I. C. C. 663; since that decision scarcely a year has gone by in which the Comission did not consider, and in most instances approve, the rates to portions of the adjustment. It has been frequently stated by the Commission that the rates to affected territory as a whole, due to [fol. 1368] the depressed character *the rates to affected territory as a whole, due to the depressed character* of the basic rates to Toledo, as well as the Detroit rate on the eastern side of the territory and the important Chicago rate on the western side, are less than reasonable maximum rates.

The most recent expression of the Commisson to this effect is contained in the case Allied Paper Mills v. C. & O. Railway, 183 I. C. C. 795. I have previously stated the principal origin differential relationships as observed in this adjustment. In addition to such, the Commission in the cases I have cited, have prescribed destination differentials as a means of fixing non-prejudicial rates to the destination groups west of Toledo and Detroit, such as the groups within which are situated Jackson, Mich., Fort Wayne, Ind., Hartford City, Ind., Lansing, Kalamazoo, and Grand Rapids, Mich., Peru, Ind., and Elkhart, Ind.

I have given this somewhat elaborate description of this enormous rate structure largely to indicate how inseparable are the destination groups and to show that any disturbance in the all-rail rate adjustment as it now obtains, with the (29) specific approval of the Interstate Commerce Commission to the territory sometimes referred to as northeastern Ohio, including the M. and S. Valleys, Canton, Massillon, Akron, Cleveland, etc., can scarcely be held to that locality

but must, if the existing and well established relationships explained are to be observed, be carried into affected territory and beyond it. The loss to the carriers through such [Fol. 1389] reductions was, based upon my evidence in Docket 25866 and related cases, estimated at one and one-half and one million dollars for each cent of reduction based on the 1929 and 1931 tonnages, respectively. Such enormous losses will in all probability result unless the present ex-river rates are increased so as to protect the all-rail rate level which has just been approved by the Commission.

Central Freight Association territory as a whole, but particularly that part including northeastern Ohio, western Pennsylvania and western New York, is highly industrialized due to the immense production of iron and steel articles and coke from by-product coke ovens which have come to be almost necessary complement to blast furnaces. My next exhibit, No. F-4, is a map entitled "Ohio and Border Junctions Points", which show the locations of coke plants by means of solid black squares, of blast furnaces by means of solid black dots, and of iron and steel plants by black stars. The locations of these industries were obtained from the publication (30) of the Steel Publications, Inc., Pittsburgh, Pa., entitled "Directory of Iron and Steel Plants, Year 1931". Iron and Steel plants and their complementary by-product coke ovens are perhaps the largest users of coal within this territory, and consequently it has always been necessary for the carriers to consider these industries in the fixation of bituminous coal rate so as to avoid improper alignments which will act as deterrents to free competition between such industries.

While substantial quantities of ex-river coal have moved since the establishment of the rates effective July 16, 1932, [Fol. 1390] to iron and steel industries principally for the production of by-product coke, it is also true, as I shall later show, that large quantities of steam coal have also moved, some of which is used in the production of electricity, a great deal of which is used in the steam industries themselves, and in the communities within which they are situated. It was the movement of this steam coal in competition with all-rail steam and domestic coal from the No. 8 District which was referred to by Mr. Durham in his testimony in Docket 25866 as one of the principal factors which impelled the Wheeling and Lake Erie Railroad to reduce its Ohio intrastate rates.

For these reasons it is evident that the present ex-river rates not properly aligned with the all-rail rates both as (31) to origin and destination relationships, as well as the level of the rates, are disturbed and tend to disrupt the all-rail rate levels and relationships.

In presenting this map I am merely showing the locations of iron and steel plants which might be said to be within the territory immediately involved in this proceeding, and it should not be understood that the iron and steel and by-product coke industries are not situated elsewhere. As a matter of fact, these industries have reached a highly developed state at many points and districts in C. F. A. territory, as well as in various sections of Eastern Trunk Line territory.

(Respondents' Exhibit F-4, Witness Kern, received in evidence.)

Exhibit No. F-5 is a list of coke plants, blast furnaces and [fol. 1971] iron and steel plants, and their ownerships, as taken from the Directory of Iron and Steel Plants, Year 1931, published by Steel Publications, Inc., Pittsburgh, Pa. It includes all of the industries which were spotted upon the preceding map exhibit.

(Respondents' Exhibit F-5, Witness Kern, received in evidence.)

Exhibit No. F-6 is a list of by-product coke plants which are complements to iron and steel plants, and page 2 of the exhibit shows the by-product coke plants serving a commercial and gas-producer purpose. The tabulation includes only coke ovens situated in what is generally (32) termed Central Freight Association territory, but includes the ovens at Johnstown, Pa. It is to be observed that the annual coal carbonization capacity of the coke ovens which are adjuncts to iron and steel plants totals 53,430,300 tons, and that of the ovens of a commercial or gas-producer nature 7,932,675 tons, making a grand total of 61,362,975 tons of coal per annum. This exhibit shows quite forcibly the important place which by-product coke ovens have among the consumers of bituminous coal in Central Freight Association territory.

(Respondents' Exhibit F-6, Witness Kern, received in evidence.)

Exhibit No. F-7, entitled "Statement of Average Distances via all routes and viz short routes, Rates and Earnings per ton per mile on Bituminous Coal viz all-rail routes from Origin Districts indicated to destinations in Ohio to which Ex-River Rates are in effect", is offered to show the level of the all-rail rates which are now being adversely [fol. 1372] affected by existing ex-river coal rates from the standpoint of distances and ton mile earnings. The best method of measuring group rates is the distance reflecting the average of all tariff routes, but because this Commission in its decision in Docket 25566 showed in Appendix A thereof the distances viz average short tariff routes, I have shown such distances and the ton mile earnings they reflect (33), as well as the average all-route distances and ton mile earnings. Of course, all-rail rates appear on a slightly higher level when measured by average short route distances than by average all-route distances, but in either case, as I shall presently show, the ex-river rates I am suggesting in this proceeding compare very favorably with the all-rail adjustment, whereas the existing ex-river rates are substantially lower. In connection with this exhibit I desire to state that all of the rates appearing upon it were approved by this Commission as reasonable or required to be published in its decision in Docket 25566, and further that all of the distances used were of record in that proceeding.

(Respondents' Exhibit No. F-7, Witness Kern, received in evidence.)

Exhibit No. F-8 is entitled "Statement of Rates, Average Distances and Earnings per ton per mile on Ex-River Bituminous Coal from Ohio River Transfer points to Canton, Cleveland, Lorain, Massilon, South Lorain, Warren and Youngstown, Ohio, via all tariff routes".

In this exhibit I have shown the distances via tariff routes over which all existing ex-river rates are published, the [fol. 1373] present rates, and the earnings per ton per mile. Because the ex-river transfer points are properly divided into two groups, one consisting of Conway, Pa., on the P. R. R. and Colona, Pa., on the P. & L. E. Railroad, and the other including the River Division points of the Wheeling & Lake (34) Erie and points on the B. & O. and Pennsylvania Railroad in the same vicinity, I have averaged the

distances from each of these groups to each of the points of destination, which seems to be the best method of determining the number of miles of service involved in the movement of ex-river coal upon existing rates.

It is to be noted that to Canton and Massillon, Ohio, no rates or distances are shown from Colona. This is due to the fact that the routes available from Colona to Canton and Massillon extend through the higher rated Akron destination rate group which, based upon the formula for determining ex-river rates to points other than those involved in these cases, would produce higher than the Canton-Massillon rate of $1.02.

This situation was presented to the Commission by the Pittsburgh & Lake Erie Railroad in Fourth Section Application No. 14824, and in a decision reported in 190 I. C. C. 687 Fourth Section relief was granted, subject, however, to observance of the so-called equi-distant clause of the Fourth Section. Since the decision certain complications incident to reductions which the equi-distance clause would cause have arisen, and consequently to date no rates have been published by the Pittsburgh & Lake Erie Railroad.

[fol. 1374] In concluding my discussion of this exhibit I desire to state that by comparing the ex-river rates, distances and (35) ton-mile earnings with the all-rail rates, distances and ton-mile earnings appearing upon the preceding exhibit the disparity in the rate levels is readily discernible.

For example, the average distance shown on Exhibit F-7 from the No. 8 District to Canton via all tariff routes is 77.2 miles, and via average short routes 71.6 miles. The distance from the Wheeling & Lake Erie Railway River Division and related points via all tariff routes is 86.8 miles. This figure is properly comparable with the average short all-rail rate distance, because in the instance of ex-river rates each origin carrier names but one route from each origin to Canton. Similar comparisons can be made in connection with all other ex-river rates involved, and it will invariably be shown that the carriers are transporting ex-river coal much greater distances on lesser rates than they transport all-rail coal.

(Respondents' Exhibit F-8, Witness Kern, received in evidence.)

Exhibit No. F-9, entitled "Statement of Rates, Average Distances and Earnings per ton per mile on Bituminous Coal, Ex-River, from Ohio River Transfer Points, All-Rail from Active Mines in the Ohio No. 8 District to Cleveland, Ohio, via B. & O. R. R. direct," is a comparison of the distances via the B. & O. Railroad in transporting ex-river coal from its river transfer points, viz., Bellaire, Bridgeport and Martins Ferry, Ohio, and from active mines in its (36) No. 8 District to Cleveland via the B. & O. Railroad locally.

[fol. 1375] In the instance of the ex-river rates the route used is the only route used is the only route available to the traffic, whereas the all-rail rates are applicable over several additional routes. Here it will be seen that the ex-river coal is transported 157.1 miles at a rate of $1.27, yielding 8.08 mills per ton mile, whereas the all-rail coal is transported 140.6 miles at a rate of $1.74, yielding 12.38 mills per ton per mile. This clearly indicates that the ex-river rate of $1.27 may properly be increased to the all-rail rate of $1.74 and still yield less per ton per mile than the all-rail rates.

(Respondents' Exhibit F-9, Witness Kern, received in evidence.)

Exhibit No. F-10 is entitled, "Statement of Rates, Average Distances and Earnings per ton per mile on Bituminous Coal from Ohio River transfer points, all-rail from Active Mines in Ohio No. 8 District to Cleveland, Ohio, via P. R. R. direct." Here it will be noted that the average distance which the Pennsylvania Railroad move ex-river coal from points within the No. 8 District is about 8 miles less than the average distance which it transports all-rail coal from active mines in the No. 8 District to Cleveland. The ex-river rate, however, yields but 10.02 mills, and the all-rail rate 12.87 mills. This also indicates that the ex-river rate should be advanced to the all-rail rate basis. (37)

(Respondents' Exhibit F-10, Witness Kern, received in evidence.)

Exhibit No. F-11 is similar to the two preceding exhibits, but shows the situation with respect to the Wheeling & Lake [fol. 1376] Erie Railway. Here the average distance from ex-river transshipping points is some 15 miles greater than

the Wheeling's all-rail distance to Cleveland, and revenue per ton per mile on the ex-river rate is 8.63 mills and on the all-rail rate 13.19 mills, again showing that the ex-river rate is on a substantially lower level than the corresponding all-rail rates and should be advanced to the higher level.

(Respondents' Exhibit F-11, Witness Kern, received in evidence.)

Exhibit No. F-12 is a composite statement of the number of origins, total miles, average distances and revenue per ton per mile on ex-river coal from Ohio River transfer points to destination via all tariff routes. This may be described as a composite of the four preceding exhibits, particularly Exhibit No. F-8. It shows at a glance the average miles of rail service performed under the existing ex-river rates and the revenue per ton per mile.

(Respondents' Exhibit F-12, Witness Kern, received in evidence.)

Exhibit No. F-13 shows the distances from various mines on the Monongahela River and Alexander Mine on the Ohio River to the more important railway transfer points of Conway, Colona, Mingo Junction, Martins Ferry and (38) Bridgeport, Ohio. The distances were obtained from the United States Department of Engineers at Pittsburgh, Pa., whose jurisdiction includes all of the Monongahela, Youghiogheny and Allegheny Rivers, and that part of the Ohio River from Pittsburgh to Powhattan Point, a distance of [fol. 1377] 109 miles. The river distances contained upon this exhibit are introduced as a foundation for other exhibits and testimony to follow.

It will be noted that all of the mines listed on this exhibit show the pool number, except Lilley and Alexander. Lilley Mine is in Pool No. 4, and Alexander Mine is on the Ohio River, and I do not believe they can properly number pools there. The Alexander Mine is at Moundsville, across the river from Cairo, Ohio. The distance from the Costanzo Mine to Martins Ferry is one and a half miles. That is the nearest principal shipping point.

(Respondents' Exhibit F-13, Witness Kern, received in evidence.)

Exhibit No. F-14 is entitled "Comparison (39) of Distances from Rail and River Mines on the Monongahela River in the Pittsburgh and Connellsville Districts to Cleveland, Ohio, via short all-rail routes and short river and rail routes in connection with the P. R. R., P. & L. E. R. R., W. & L. E. Ry., and B. & O. R. R."

The showing as made by this exhibit is that there is no saving of transportation in terms of miles by the use of the barge and rail routes, but on the contrary, it is frequently the case that the barge and rail routes are substantially greater than the more direct rail routes. Of course, traffic moving barge to Conway and Colona, thence rail, is transported distances which closely approximate the rail mileages from the same mines to Cleveland, but traffic moving via barge to Mingo Junction, Martins Ferry or Bridgeport, thence rail, moves over routes which are substanially [fol. 1378] circuitous.

As an example, the distance from Ella Mine in Pool 3 to Cleveland via short route is 166.9 miles figured via P. & L. E. R. R., Youngstown and Erie R. R.; via barge and rail through Conway the distance is 171.2 miles; via barge through Colona, 166.6 miles; via barge to Mingo Junction, thence W. &. L. E. Ry., 258.2 miles; via barge to Martins Ferry thence B. & O. R. R. 281 miles, and via barge to Bridgeport, thence B. & O. R. R. 280.4 miles. It can, therefore, be said that the use of a joint river and rail (40) route never reduces the distance coal must be transported, but it frequently increases such distances as much as 114 or more miles.

(Respondents' Exhibit F-14, Witness Kern, received in evidence.)

Exhibit No. F-15 is a statement showing names and locations of the nearest active mines in the Pittsburgh District and the No. 8 District to Ohio River transfer point for ex-river coal, with the distances from such mines to the river transfer point. It shows that in the instance of Colona and Conway, Pa., the nearest mines are 20.34 and 30 miles, respectively, from the river transfer point, proving my previous statement that Colona and Conway are not situated within the Pittsburgh or any other coal originating group, but, as my map Exhibit No. 1 shows, are situated about equidistant between the northern boundary of the Pittsburgh

District and the southern boundary of the Mahoning and Shenango Valleys group.

On the other hand, the distances from the active mines to the ex-river transfer points in the State of Ohio, includ-
[fol. 1379] ing the Wheeling & Lake Erie Railway River Division points and Bellaire, Bridgeport, Martins Ferry, Mingo Junction, Steubenville on the Pennsylvania Railroad or B. & O. Railroad, are in most instances insignificant or nil.

For example, there are coal mines within the switching or corporate limits of Martins Ferry, Mingo Junction and (41) Steubenville. There are mines as near as 1½ miles from Bellaire, 2 miles from Rush Run, and one mile from Warrenton.

In connection with this exhibit it should be borne in mind that joint rail distances have not been computed, and the mileages shown are the actual local mileages of the railroad publishing ex-river rates from the river transfer points and all-rail rates from the indicated mines. Consequently, it will be noted that, in so far as the P. R. R. is concerned, there are mines shown at Martins Ferry, Mingo Junction and Steubenville, whereas to Martins Ferry via B. & O. Railroad the nearest mine is 6.1 miles, via Wheeling & Lake Erie it is 8 miles, and to Steubenville via Wheeling & Lake Erie the nearest mine is 15 miles away.

One cannot, therefore, use the distances appearing upon the exhibit as indicative of the geographic location of the nearest mine to the indicated point. All that the exhibit is intended to show is that these river shipping points are actually within the boundaries of the Ohio No. 8 District and that there are coal mines situated at or very near to each
[fol. 1380] and all of them.

(Respondents' Exhibit F-15, Witness Kern, received in evidence.)

As my next exhibit, No. F-16, I offer a map which shows in blue the Ohio, Allegheny and Monongahela Rivers, and in red the lines of railroads within the Pittsburgh (42), Connellsville, and a part of the Fairmont District where coal mines are located. Because so much has been said in these cases of the potential production of coal at mines equipped with river tipples, the assumption may arise that the pro-

dueing coal mines within the districts through which the Allegheny and Monongahela Rivers flow are all situated near or adjacent to the rivers. This map shows that such is not the case and that by far the greater portions of the districts are situated some distance from the rivers. The great majority of producing mines in those districts cannot load coal direct into barges and consequently to the extent that river-rail transportation may be performed at less than all-rail rates, the operators of such mines are injured, and in many cases eliminated from the markets within which ex-river coal is sold.

(Respondents' Exhibit F-16, Witness Kern, received in evidence.)

My next exhibit, No. F-17, is a statement of active mines in the Pittsburgh District on the P. R. R., P. & L. E., Montour, P. C. & Y., P. & W. V, and B. & O. roads from which the all-rail distances to Cleveland, Ohio, are 156 miles or less, which is the maximum distance over which the W. & L. E. ex-river rates are in effect to Cleveland, Ohio, and applies [fol. 1381] from Steubenville to Cleveland, Ohio, and applies from Steubenville to Cleveland, Ohio. The exhibit lists 52 active mining operations, the production of which today is assessed a rate of $1,84 net ton for a (43) rail transportation service the same or less distant than is performed by the Wheeling & Lake Erie Railway in handling ex-river coal from Steubenville to Cleveland at a rate of $1.27, which is 57 cents per ton lower than the Pittsburgh to Cleveland rate. The maximum distance for which the $1.27 ex-river rate applies via Wheeling & Lake Erie is 158 miles, being the distance from Steubenville to Lorain.

Had I selected the longest route over which an ex-river rate applies to Cleveland and Lorain, I could have increased the distance to 159.3 miles in the instance of the route of the B. & O. from Bellaire to Cleveland, or to 162.2 miles in the instance of the route from Colona to Lorain via P. & L. E., Youngstown and B. & O. In either of these instances the number of mines would have been increased at least to the extent of adding Montour Mine No. 10 on the Montour Railroad, which 159 miles from Cleveland and which is one of the largest producers of coal in the Pittsburgh District, producing 958,123 tons in 1932.

(Respondents' Exhibit F-17, Witness Kern, received in evidence.)

Exhibit No. F-18 shows the 1932 production of coal at all the mines listed on the previous exhibit. This information was obtained from reports of the Commonwealth of Penn- [fol. 1382] sylvania Department of Mines, and in the instance of Locust Grove Mine at Collier, W. Va., from the records of the Pennsylvania Railroad. It is to be observed (44) that the total production of the mines in the Pittsburgh District, which as I stated in connection with Exhibit F-17 are nearer to Cleveland than the longest disttance over which ex-river rates obtain to that point, was, during the subnormal year of 1932, 10,051,430 tons. Of the 52 mines listed it will be observed by noting Reference No. 4 on the exhibit that but two, namely, Oakmont Colliery at Barking, Pa., and Harmar Colliery at Harmarville, Pa., both on the Pennsylvania Railroad Conemaugh Division, are equipped with facilities to load coal into river barges. These mines in 1932 produced about 600,000 tons, which leaves about 9,400,000 tons of production at mines which cannot avail themselves of water transportation.

It is an interesting fact that the distance from Harmar Mine to Cleveland via rail is 148 miles as shown on Exhibit No. F-17 whereas the distance from Mingo Junction to Cleveland is 152 miles, and from Martins Ferry 149 miles via Wheeling and Lake Erie Railway. Thus coal from this mine moving to Cleveland through either Mingo Junction or Martins Ferry, thence Wheeling & Lake Erie Railway, is actually further from destination at the time it leaves the river than when transportation started. Mingo Junction and Martins Ferry are the only points from which the Wheeling & Lake Erie Railway has handled ex-river coal. This, however, will be established by a later exhibit. [fol. 1383] (45)

Having in mind that the listed mines are situated entirely within that part of the Pittsburgh District located generally north and west of Pittsburgh and that there are a great many more mines situated in the Pittsburgh District east of Pittsburgh amply bears out the showing as made on my map Exhibit No. F-16, with respect to the inland location of coal mines.

As to the mines with river tipples, that Harmarville, Pa., is operated by the Consumers Mining Company, a subsidi-

ary of the Wheeling Steel Corporation, whose steel plant is situated at Martins Ferry, Ohio, on the Ohio River. This operation is, therefore, captive, and its production is ordinarily consumed by the parent company. According to the Pennsylvania Bureau of Mines' Reports, in 1932, 379,763 tons of the total production of 396,974 tons were shipped by water, and it may well be assumed that all of this went to the Wheeling Steel Corporation's plant. The Oakmont Colliery at Barking, Pa., appears in the Pennsylvania Department of Mines' Reports as Oakmont No. 1 Mine of the Hillman Coal & Coke Company. Of its 1932 production of 206,849 tons, but 12,321 tons were shipped by water.

(Respondents' Exhibit F-18, Witness Kern, received in evidence.)

I come now to the matter of justifying as reasonable rates the ex-river rates which I suggested at the beginning of my testimony. For convenience, I shall here restate (46) them: from Conway and Colona to Youngstown and the M. and S. Valleys $1.01 per net ton; to Canton and Massillon $1.26 per net ton; to Cleveland and Lorain $1.51 per net [fol. 1384] ton; from Mingo Junction, Martins Ferry and other points within the Ohio No. 8 District to Canton and Massillon, $1.26 per net ton, and to Cleveland and Lorain, $1.74 per net ton.

Before introducing the series of exhibits I have prepared on this point, I desire to call attention to the fact that the average distance from Conway and Colona to Youngstown via all routes taking the existing ex-river rate of 77 cents per ton is 41.9 miles. This appears upon page 6 of my Exhibit No. F-8. By referring to Exhibit F-7, it will be observed that the average all-route distance from the Middle District to Canton is 42.7 miles, and the average short route distance is 36.6 miles. To Massillon the average all-route distance from the Middle District is 42.9 miles, and the average short route distance, 38.3 miles. In the Commission's decision in I. C. C. Docket 25566 and related cases, the Middle District rate to both Canton and Massillon was fixed at $1.01 per net ton. This indicates to my mind that a rate from Conway and Colona to Youngstown ought not to be less than what the Commission prescribed from the Middle District to Canton and Massillon. Such an alignment would also be consistent with the balance of the

all-rail rate structure which I have previously explained at length.

(47) My next exhibit, No. F-19, is a statement of bituminous coal rates for distances ranging from 40 to 50 miles under which actual movements have been made. This shows that typical and representative rates for distances [fol. 1385] approximating the Conway-Colona to Youngstown mileages range from $1.00 to $1.26 per net ton. All of the rates listed upon this exhibit apply within or near the Pittsburgh District on the Pennsylvania Railroad and are therefore properly comparable with rates and distances from Conway and Colona to Youngstown.

(Respondents' Exhibit F-19, Witness Kern, received in evidence.)

Exhibit No. F-20 is another statement of bituminous coal rates on the Pennsylvania Railroad for distances ranging from 20 to 50 miles. Here again only origins and destinations where actual movements have occurred were selected. It will be noted that these rates are also in or near the Pittsburgh District and indicate the propriety of a $1.01 rate for the haul of 41.9 miles from Conway and Colona to Youngstown.

(Respondents' Exhibit F-20, Witness Kern, received in evidence.)

Exhibit F-21 shows distances ranging from 23.8 miles to 42.8 miles on the Panhandle Division of the Pennsylvania Railroad and P., C. & Y. Railway taking rates of $1.01 or greater. This again convincingly shows that a rate of $1.01 from Conway and Colona to Youngstown would not be too (48) high.

(Respondents' Exhibit F-21, Witness Kern, received in evidence.)

Exhibit No. F-22 is a list of rates published by the Pittsburgh & Lake Erie Railroad from P. & L. E., Montour, P. & W. V., and P. C. & Y. origins to P. & L. E. destinations for distances up to 60 miles. It indicates that the local rates of the P. & L. E., as well as those published from its laterial [fol. 1386] lines, justify a rate of at least $1.01 for a distance of 41.9 miles; in fact, on the showing of this exhibit the rate might well be as high as $1.26. These comparisons

are particularly applicable for use in this proceeding because they apply in the same or generally the same territory as from Colona to Youngstown.

(Respondents' Exhibit F-22 received in evidence.)

Exhibit No. F-23 is a statement of rates and distances on bituminous coal published by the Pennsylvania Railroad between points in the State of Pennsylvania. This presents (49) a picture of the level of rates obtaining on the Pennsylvania Railroad west of Altoona, other than has been shown upon the preceding exhibit. Here it will be found that a substantially higher level of rates is published than I have suggested for application on ex-river coal.

(Respondents' Exhibit F-23, Witness Kern, received in evidence.)

Exhibit No. F-24 is another statement of rates and distances published by the P. R. R. between points in Pennsylvania,, and it again shows a level substantially higher than I have proposed for application on ex-river coal.

(Respondents' Exhibit F-24, Witness Kern, received in evidence.)

Exhibit No. F-25 is a statement showing average distances for which the W. & L. E. Railway ex-river rates apply and earnings per ton per mile, compared with representative rates and ton mile earnings on bituminous coal for similar distances in the same general territory. This exhibit shows quite clearly that the existing ex-river rates from W. & L. E. Railway Ohio River points are substantially lower than rates for corresponding distances in the same general territory. This, of course, can also be said [fol. 1387] of the corresponding rates published by the P. R. R. and B. & O. R. R. In my proposal it is contemplated that the $1.02 rate to Canton and Massillon be increased to $1.26.

Previously I have shown that this is the same rate as the Commission required to be published from the Ohio No. (50) 8 District. On this exhibit it will be noted that rates of $1.26 are commonly in effect for substantially the same distances, not only in Ohio but in western Pennsylvania. I further propose that the $1.27 rate to Cleveland and Lorain be increased to $1.74 and previously stated that such is the rate required to be published by the Interstate Commerce Commission in Docket 25566 from the Ohio No.

8 District to Cleveland and Lorain, which, of course, includes all of the river transfer points. From this exhibit it can be observed that a rate of $1.74 or greater is not uncommon for comparative distances.

(Respondents' Exhibit F-25, Witness Kern, received in evidence.)

Exhibit No. F-26 is a statement showing the number of deliveries on each carrier serving Cleveland, Lorain, South Lorain, Canton, Massillon and Youngstown, Ohio; also switching charges absorbed in effecting deliveries of bituminous coal on connecting lines at such stations. Ex-river coal rates are subject to the same switching absorptions and other terminal arrangements as are the all-rail bituminous coal rates, and consequently when deliveries must be effected upon connecting lines, the same absorptions are made out of the all-rail rates, notwithstanding the lower [fol. 1388] level of the former. The number of deliveries on each railroad within the switching districts of the cities shown upon this statement (51) were taken from the switching or terminal tariffs of the railroads which are referred to on page 2 of the exhibit, and are shown as a means of indicating the extensive number of deliveries which each rate, whether it be on ex-river or all-rail coal, contemplates; also the fact that many of the deliveries are on railroads which do not publish or participate in the line haul movement of the coal. It further will be noted from this exhibit that the amount of destination switching absorptions is in all instances substantial. For instance, at Cleveland the standard absorption is 20 cents per net ton, although in connection with the Erie Railroad is 32 cents per net ton. In addition to this, intermediate switching charges are sometimes absorbed and terminal allowances made to common carrier industrial railroads, all of which serve to diminish the line haul earnings.

(Respondents' Exhibit F-26, Witness Kern, received in evidence.)

I have previously explained at length the bases, relationships and inter-relationships of the all-rail rate structure, which is directly menaced by the ex-river coal rates here in issue, or which through any extension in the basis for such ex-river rates in accordance with the several expressions of the Interstate Commerce Commission to which I

have referred will, when they occur, cause havoc to all-rail rates.

[fol. 1389] I now desire to introduce and explain briefly a series of (52) exhibits setting forth the histories of the important rates in the all-rail adjustments. The first is Exhibit No. F-27, an historical statement of bituminous coal rates in cents per net ton from Ohio No. 8, Pittsburgh, Connellsville and Fairmont Districts to Canton, Massillon, Cleveland, Lorain and Youngstown, the specific points to which the ex-river coal rates here in issue are published.

The important showing of this exhibit is that these rates have never been changed except upon orders of the Interstate Commerce Commission or the Director General of Railroads during Federal control, or with the specific approval of the Commission.

In addition to this, I desire to state that in the application of both the general increase under Ex Parte 74, effective August 26, 1920, and the 10 per cent reduction of July 1, 1922, the method of advancing and reducing the rates so as to observe the differentials as between origin districts was also specifically sanctioned by the Commission in its opinions in those cases.

Moreover, the adjustment of August 15, 1919, restoring differentials which had been disrupted by reason of the publication of the general order 28 increases in an emergency manner through the medium of blanket supplements was with the approval and consent of the Director General. A comparison of this exhibit with my explanation of the rate (53) structure in conjunction with Exhibits F-1 and F-3, as well as the differential relationships appearing [fol. 1390] thereon and the references to decisions and orders of the I. C. C. and the Director General, will serve as confirmation of my testimony.

(Respondents' Exhibit F-27, Witness Kern, received in evidence.)

Exhibit No. F-28 is a statement of the history of the rates on coal from the Pittsburgh and Connellsville Districts to Buffalo, N. Y., and if it is coupled up with my testimony in conjunction with Exhibits F-1 and F-2 a complete picture of this rate situation will be had.

(Respondents' Exhibit F-28, Witness Kern, received in evidence.)

Exhibit No. F-29 shows the histories of rates from the Pittsburgh, Connellsville and Fairmont Districts to Toledo, Ohio and Detroit, Mich. This is introduced to typify the history of rates to all affected territory. In this adjustment the Pittsburgh, Connellsville and Fairmont Districts are parts of the Inner Crescent, which likewise includes, as is shown by my map Exhibit No. F-3, origins in southern West Virginia and eastern Kentucky.

Prior to August 30, 1917, the effectiveness of the order of this Commission in I. & S. 774, rates from the basic Ohio Districts were made differentially 25 cents under the Inner Crescent as shown on this exhibit as the Connellsville and Fairmont Districts. Outer Crescent rates were differentially (54) 20 cents higher than that. With the effective-
[fol. 1391] ness of the rates approved or prescribed by the Commission in I. & S. 774 on August 20, 1917, the Inner Crescent rates became differentially 40 cents per ton over Ohio, and the Outer Crescent remained 20 cents over the Inner Crescent or became 60 cents over the Ohio rates. This differential alignment, except for the temporary disruptions as a result of General Order No. 28, remained until the decision of the Commission in the Ohio-Michigan Coal Cases, 80 I. C. C. 663, when the Inner Crescent differential over Ohio was widened to 50 cents, and the Outer Crescent over the Inner Crescent to 25 cents, thus making the Outer Crescent rates 75 cents over Ohio.

(Respondents' Exhibit F-29, Witness Kern, received in evidence.)

I now desire to discuss the question of tonnages, and as my first exhibit on this point offer No. F-30, a statement showing net tons of ex-river coal loaded, by weeks, at points on the lines of the B. & O., P. R. R. and P. & L. E. from the effective date of the rates, July 16, 1932, and various subsequent dates, to June 3, 1933.

Incidentally, that exhibit inadvertently shows January 29, 1933, and that date should be corrected to June 3rd. In some instances it stops at June 1st, and in others at June 3rd. I mean the date in the caption. (55)

Particular attention is directed to page 9 of the exhibit, which sets forth a recapitulation showing the total tonnages [fol. 1392] which moved from each river transfer point to each destination. It will be observed that ex-river coal has moved to Elyria, Avon, Freedon, East Liverpool, Alliance and Ceico, to which points ex-river rates are not referred to in the original decision in that case, and it, therefore, seems necessary to state the rates applicable on such.

Elyria, Ohio, viz the routes of the B. & O. R. R. over which the shipments moved, is intermediate to Lorain and therefore takes the Lorain ex-river rate of $1.27. Avon, Ohio, is situated east of Lorain, Ohio, on the Nickel Plate and Lake Shore Electric roads. Via the routes of the Nickel Plate the Lorain rate is applicable through operation of the intermediate clause.

No through rates are published on ex-river coal to points on or via the Lake Shore Electric Line, but that road publishes a switching charge of $7.50 per car from Lorain to Avon, and some of this traffic was assessed the Lorain rate plus this switching charge. The movement of ex-river coal from Conway to Freedom paid the Youngstown rate of 77 cents through operation of the intermediate clause. The movement from Steubenville to Warren paid the No. 8 District all-rail rate of $1.34, Steubenville being an origin point in the (56) No. 8 District. The movement from Steubenville to East Liverpool paid the all-rail local rate of the P. R. R. of 90 cents per ton. The movement from Steubenville to Alliance paid the Ohio No. 8 all-rail interstate rate of $1.26 per net ton through operation of the intermediate clause. In addition to the movements shown upon this ex-
[fol. 1393] hibit, 288 tons of ex-river coal moved from Bridgeport (West Wheeling) to Port Huron, Michigan, and 389 tons to Toledo, Ohio, at the standard No. 8 all-rail rates of $2.40 net ton to Port Huron, and $1.89 net ton to Toledo. Bridgeport (West Wheeling) is a point in the No. 8 District on the B. & O., and the all-rail rates therefrom may be applied in the absence of special rates on ex-river coal.

Ceico, Ohio, on the New York Central, is located at or near Ashtabula, and the Cleveland ex-river rate from Colona of $1.27 applies to that point.

(Respondents' Exhibit F-30, Witness Kern, received in evidence.)

Although the ex-river coal rates were only published on July 15, 1932, it is to be noted that the total movement from ex-river points on the B. & O., P. R. R. and P. & L. E. aggregated 576,844 net tons, which indicates an exceptionally rapid development of the traffic. To better show this development, I have divided the period of 46 weeks covered by the exhibit into two parts, and find that during the first 23 weeks, or until the week ending December 25th, 1932, the (57) movement was 184,774 tons or 32 per cent of the total. During the last 23 weeks the movement was 392,070 tons or 68 per cent of the total. These figures indicate that the movement during the last half of the 46-week period was 112 per cent more than the movement during the first half. An examination of the weekly movements shown upon this exhibit will indicate that the most recent weeks covered show the heaviest movement of traffic. This is particularly true [fol. 1394] with respect to Conway and Colona, where the bulk of the tonnage was transferred from barges to cars, but is likewise apparent in the instance of other transfer points.

Before leaving this exhibit, I desire to state the transfer facilities by which the ex-river coal tonnages were handled. I shall discuss them in the order that they appear upon the exhibit. Coal delivered to the B. & O. Railroad by barges at Bridgeport (West Wheeling) is transferred by means of self-unloading barges, by which I mean barges equipped with a clam-shell or other equipment with which the coal can be removed from the barge and placed into cars, or by means of similar equipment anchored near the shore. At this point the tracks of the B. & O. are close to the water line and not much above water level, which permits of this character of transfer.

At Conway, Pa., the coal is transferred by equipment owned and operated by the Pennsylvania Railroad. (58)

At Mingo Junction, Ohio, the coal is transferred by equipment owned by an iron and steel plant of the Steel Corporation situated at that point. At Steubenville, Ohio, coal is transferred by equipment owned and operated by the Eastern Ohio Sand and Gravel Company into hoppers of the Costanzo Coal Mining Company, which operates a coal mine on the Ohio River. This concern also has facilities at the transfer point to screen and size the coal, thus preparing ex-river coal for domestic purposes.

[fol. 1395] At Colona, Pa., the coal is transferred by equipment owned and operated by the Pittsburgh & Lake Erie Railroad. (59)

My next exhibit, No. F-31, shows the tonnages of ex-river coal transported by the Wheeling & Lake Erie Railway since the establishment of its ex-river rates on July 16, 1932, to and including May 31, 1933.

(Respondents' Exhibit F-31, Witness Kern, received in evidence.)

As in the previous exhibit, the movements are shown by weeks, but the weeks are here referred to by the last day of each, whereas in Exhibit No. 30 the first day of each week is shown.

The coal reported on this exhibit as transferred to cars at Mingo Junction was handled by the equipment of the Steel Corporation the same as that appearing on the preceding exhibit. Coal delivered to the Wheeling at Martins Ferry may be transferred from barges over the facilities of the Wheeling Steel Corporation or the Belmont Supply Company.

I am uninformed as to whether either or both of these facilities are used. It is to be noted in passing that the only ex-river (60) coal now being handled which pays the standard transfer charge of twelve cents per ton as such is that moving through Conway and Colona, these being the only common carrier owned and operated, and therefore the only public transfer, facilities at points from which the ex-river rates are applicable. Because the Wheeling & Lake Erie Railway ex-river coal is handled only over the facilities of [fol. 1396] private corporations, it is restricted largely to the coals of those corporations.

This is particularly true of Mingo Junction where it will be noted that the entire movement was to Cleveland and Lorain at which the Steel Corporation has plants.

By adding the total Wheeling & Lake Erie Railway ex-river tonnage of 251,221 tons to the ex-river coal shown upon Exhibit No. 30 of 576,884 tons indicates that the total movements of ex-river coal during the first 46 weeks of the effectiveness of ex-river rates was 828,108 tons.

By taking the amount of coal moving from all ex-river transfer points during the last full week reported on Ex-

hibits F-30 and F-31, which was 36,435 tons, and multiplying it by 52, it will indicate that the traffic was then moving at the rate of about 2,000,000 tons per year.

It is evident from the facts I have previously stated that under the present preferential rate structure the movement for the ensuing year will undoubtedly far exceed that based upon the movement during the week beginning May 21st and ending with (61) May 27, 1933.

Of course, the movement of ex-river coal has not yet reached its peak, although at the present rate of movement it will aggregate annually at least two million tons of coal.

In the original decisions of the Commission in these cases much is said of the movement of coal all-rail in the territory [fol. 1397] in which the ex-river rates apply.

This matter is also discussed at some length by the Commission in its decision in Docket 25566.

In order to bring these data down to date I offer as Exhibit No. F-32 a statement entitled "Statement of Bituminous Coal Tonnages (net tons) from Ohio and Crescent Districts to Cleveland during the years 1930 to 1932, inclusive."

(Respondents' Exhibit F-32, Witness Kern, received in evidence.)

It is desired to point out the huge consumption of coal in Cleveland and its suburban district, which, even in the depressed year of 1932, totaled in excess of 4,100,000 tons.

In the peak year of 1925 the total movement was about 8,000,000 tons. (62)

Coals moving from ex-river transfer points on basis of the rates here in issue are competitive with and may be used for the same purposes as all of the coal moving to Cleveland all-rail, with the exception of the low-volatile coals originating in the Outer Crescent, which amount to less than 25 per cent of the total.

Low-volatile coal is extensively used in the Cleveland area as a high grade domestic coal and it therefore must, to an extent, compete with high-volatile coals such as are moving or can be moved on the ex-river rates for this character of business.

In recent years there has been a marked displacement of low-volatile coals by high-volatile coals in domestic markets. [fol. 1398] Originally it was assumed that the ex-river

rates would attract only coking coals from the Pittsburgh and Connellsville districts.

However, since the establishment of ex-river rates, substantial quantities of industrial steam coal, including that used in the production of electricity at the large plants in Cleveland, Ceico, and Avon, Ohio, have been diverted from the customary all-rail routes and it has been demonstrated that coal may be barged to Ohio River Transfer points, there screened and sized, and shipped to retail coal dealers for domestic purposes.

This, it is feared, will develop, and substantial quantities (63) of domestic coals be diverted from all-rail routes.

Exhibit No. F-33 shows the movement of coal from all Ohio districts and the Crescents to Lorain and South Lorain, Ohio. The same comments as were made in the instance of Exhibit F-32 are here applicable, except that the proportion of low-volatile coal to the total is somewhat less than in Cleveland.

(Respondents' Exhibit F-33, Witness Kern, received in evidence.)

Exhibit No. F-34 shows the same information with respect to the movement of coal to Youngstown, Ohio, and other points in the Mahoning Valley, which may be roughly described as that part of the Youngstown rate group situated in the State of Ohio; the balance, known as the Shenango Valley, being in the State of Pennsylvania and also consumes large annual tonnages of bituminous coal.

(Respondents' Exhibit F-34, Witness Kern, received in evidence.)

[fol. 1399] Aside from the fact that this exhibit indicates that the consumption of coal in the Mahoning Valley approximates in normal years that at Cleveland, I wish to point out the fact that the movement of low-volatile coal from the outer crescent is proportionately less than is shown on Exhibit F-32 moving to Cleveland.

Exhibit No. F-35 shows the movement of coal for the same period of years, viz: 1920 to 1932, inclusive, to Canton, East Canton, and North Canton, Ohio.

(Respondents' Exhibit F-35, Witness Kern, received in evidence.)

(64) Here again appears a substantial movement of high-volatile coals directly competitive with that which moves on the ex-river rates.

The movement of low-volatile coals from the outer crescent is again shown to be substantially less than the movement of high-volatile coals.

Exhibit No. F-36 shows the movement of coal to Massillon, Ohio, for the years 1920 to 1932, inclusive, and the same remarks as in the instance of the preceding exhibits are here applicable.

(Respondents' Exhibit F-36, Witness Kern, received in evidence.)

In my discussion of the all-rail rate adjustment I showed the inter-relationships between all of the all-rail rates within Central Freight Association territory. In order to give some idea of the importance of these rate structures from a tonnage standpoint, I offer Exhibit No. F-37, entitled "Statement of Coal Tonnage for Years 1929 to 1932, inclusive, from Ohio Districts and the Inner and Outer Crescents to important consuming destinations in C. F. A. territory."

[fol. 1400] (Respondents' Exhibit F-37, Witness Kern, received in evidence.)

This statement deals only with the major consuming industrial districts, and by referring to page 2 of the exhibit it will be noted that the aggregate movement in 1929 was in excess of 41,000,000 tons, of which 26,700,000 tons were high-volatile coal competitive with that moving on the ex-river rates in (65) issue.

This great tonnage, as well as the greater tonnage which terminates at other destinations in the territory of which I shall speak later, will undoubtedly be jeopardized if, as consignees have requested, the present level of ex-river rates be extended throughout the territory.

Exhibit No. F-38 shows the aggregate movement of coal from the Crescents and Ohio districts into and through C. F. A. territory for the years 1922 to 1932, inclusive.

(Respondents' Exhibit F-38, Witness Kern, received in evidence.)

Observe that the 1929 figure exceeded 152,000,000 tons, of which at least 75 per cent was high-volatile coal com-

petitive with coals produced at mines along the Allegheny, Monongahela and Ohio rivers.

The mere recitation of this huge figure is sufficient to indicate the possible effects on the all-rail rate structure, many times declared reasonable by the Commission, of a continuation of the relatively low level of ex-river rates and their extension throughout Central Freight Association territory. In submitting these figures I do not wish to be understood to mean that all of the coals consumed in [fol. 1401] C. F. A. territory for the same purposes as ex-river coal can be used, could or would be displaced by ex-river coal.

The carriers could not afford to permit this, but at the present rate of development of ex-river tonnages the time will (66) soon be reached when all-rail coals must be placed on a competitive rate basis with coals moving via river and rail, and even though the carriers do not extend the basis to include other destinations than those now named in the ex-river coal tariffs, we feel that because of the all-rail rate relationships I have described at length, such reductions can not be confined to the destinations of ex-river coal, but probably will extend over the entire territory.

The tonnage exhibits I have just introduced indicate the important place which bituminous coal holds in the total traffic handled by Central Freight Association carriers. To indicate this more forcibly I offer as Exhibit No. F-39 a statement of total freight traffic and revenues of carriers indicated thereon and the proportion of their total traffic and revenues which is derived from bituminous coal.

(Respondents' Exhibit F-39, Witness Kern, received in evidence.)

The statement covers the calendar years 1929, 1930, 1931, and the first half of 1932.

The figures prove the well-known fact that bituminous coal is the most important single item of traffic handled by C. F. A. lines as a whole.

The first page treats only with tonnages. It shows, for [fol. 1402] example, that during the first six months of 1932, 44.01 per cent of the Pennsylvania Railroad freight traffic was bituminous coal, and on the New York Central Railroad the ratio of (67) bituminous coal to all freight traffic was 44.81 per cent. On the Pittsburgh & Lake Erie in the first six months of 1932 62.9 per cent of its traffic

was coal, and on the Baltimore & Ohio 51.73 per cent was bituminous coal.

Nothwithstanding the fact that the Erie Railroad does not originate bituminous coal traffic in substantial quantities, that commodity represented 23.2 per cent of its total freight tonnages during the first half of 1932.

Page 2 of the exhibit deals with the relation of revenues derived from bituminous coal traffic to total freight traffic revenues of the indicated carriers.

Although, as is quite natural, the percentages reflecting the proportions of revenues which these lines derived from bituminous coal traffic are not as large as in the instance of tonnage, they nevertheless indicate that these carriers are dependent upon bituminous coal for a very large proportion of their revenues.

During the first six months of 1932, for example, 29.79 per cent of the Pennsylvania Railroad's freight traffic revenues and 22.46 per cent of the New York Central Railroad's freight traffic revenues came from bituminous coal.

As to the Pittsburgh & Lake Erie Railway, 56 per cent of its revenues come from bituminous coal, and of the total revenues of the Baltimore & Ohio, 32 per cent come from bituminous coal.

[fol. 1403] Exhibit No. F-40 is a convenient statement of the percentages (68) which bituminous coal traffic and revenues bore to the total freight traffic and revenues of the selected carriers during 1929, 1930, 1931 and the first half of 1932, which were computed on the preceding exhibit.

Because this statement shows no new information, being a tabulation in convenient form of data set forth on the preceding exhibit, it need not be commented upon.

(Exhibit F-40, Witness Kern, received in evidence.)

In the forepart of my testimony I quoted from decisions of the Interstate Commerce Commission which indicated a desire on its part to fix ex-river rates which, when added to barge rates and transfer charges, would approximate the existing all-rail rates.

It therefore becomes necessary to show that based upon the facts which the Commission's decisions indicate were used in its effort to bring about a fair relationship between the two classes of rates, were, based upon subsequent ex-

perience, incorrect, and that because the barge rates were represented at the prior hearings in these cases as higher than those which do now and have since these hearings prevailed, the rail factors were made correspondingly too low. (69)

I desire to point out that because the barge lines handling the coal traffic, being almost in every instance privately owned by the producing coal company or by a steel company with mines and/or steel plants on the Monongahela or Ohio Rivers, are totally unregulated and conse-
[fol. 1404] quently their rates are not matters on which the public is definitely informed, it is and always has been difficult to develop the true river costs.

However, this Commission, in its decision in I. & S. Docket 3282, 163 I. C. C. 3, indicated, at page 8, that the cost of barging coal from Nemocolin mine in the Connellsville district to Smiths Ferry was estimated by a witness in the P. L. & W. extension case at thirty cents per net ton.

Using this vessel rate and adding to it twelve cents, which is the charge for transferring coal from barges to cars at Conway and Colona, and the ex-river rate of 77 cents to Youngstown, it makes a through charge of $1.29 from Nemocolin mine to Youngstown, which is thirteen cents less than the all-rail rate of $1.42. (70)

At page 217 of the decision in I. & S. Docket 3619, 185 I. C. C. 211, it is shown that the testimony of an official of a barge company indicated that a proper river rate from Pool 6 in the Connellsville district to Mingo Junction and Brilliant, Ohio, was 45 cents per ton, and it is strongly intimated that this figure was added to a twelve cent handling charge and that the total of 57 cents was deducted from the Pittsburgh district to Cleveland rate, making the ex-river rate to Cleveland of $1.27.

On this basis or theory coals from the Connellsville district may be moved via rail and river at a saving of six cents per ton.

In the decision in Docket 25566, 192 I. C. C. 413, the Commission, at page 432, stated:

[fol. 1405] "To determine the present charges for barge movements, the Wheeling purchased four barge loads of coal which were shipped by river and rail routes to Canton and introduced evidence concerning them in this proceeding. One of the barge loads was shipped from a Monon-

gahela River mine in the Pittsburgh district, another from a mine in Connellsville district, and two were shipped from Ohio river mines in the Pittsburgh district. The coal from the Monongahela River mine was transferred from barges to cars at Conway, and the coal from the Ohio River mines was transferred at Martins Ferry. The barge charge from the Monongahela mines to Conway was 25 cents (71) per net ton and the transfer charge at that point was twelve cents per net ton. The charges for the river transportation to Martins Ferry and the transfer at that point were fifteen cents per net ton on the coal from one of the Ohio River mines and eighteen cents per net ton from the other. There is nothing in the record to indicate that those charges are less than ordinarily would be made for the water transportation and transfer services."

I would like to state here that the Commission might have found that there is every reason to believe that the barge charges quoted in the report were more than ordinary inasmuch as they were assessed movements in single barge lots and the original records in these cases indicate that barge rates are customarily made on a sliding basis which diminishes as the tonnages contracted for increase.

Following the excerpt from the decision which I have just quoted, the Commission shows by a tabulation that ex-river coal may be moved from Ohio River mines in the [fol. 1406] Pittsburgh district to Cleveland for $1.45 and $1.42, thereby defeating the Pittsburgh district rate by 39 and 42 cents per ton. From the Monongahela River mines in the Pittsburgh and Connellsville districts coal may be moved to Cleveland for $1.64, thereby defeating the all-rail rates from the Pittsburgh district by twenty cents and from the Connellsville district by 26 cents. I want to point directly to the fact that the evidence in that (72) case showed that the barge costs were the same from Connellsville and the Pittsburgh district, which is apt to be ruinous to the established all-rail differentials.

I desire to offer as Exhibit F-41 a copy of Witness Vilas' Exhibit No. 152 in Docket 25566, indicating that a rate of 25 cents per net ton was paid for barging a single barge load of coal from Moffitt Mine of the Hillman Coal & Coke Company in the Connellsville district to Conway Docks, a distance, as shown by my Exhibit 13, of 107 miles.

(Respondents' Exhibit F-41, Witness Kern, received in evidence.)

My next exhibit, No. F-42, is a copy of Witness Vilas' Exhibit No. 153 in Docket 25566, indicating a barge charge on a single barge load of coal from Ella Mine in the Pittsburgh district to Conway Docks, a distance, as is shown on my Exhibit No. 13, of 56.2 miles.

(Respondents' Exhibit F-42, Witness Kern, received in evidence.)

Exhibit No. F-43 is a copy of Witness Vilas' Exhibit 154 in Docket 25566, indicating a barge rate on a single barge load of coal from Costanzo Mine to Martins Ferry, Ohio, of fifteen cents per net ton, including transferring from [fol. 1407] barge to car at Martins Ferry.

The distance from Costanzo Mine to Martins Ferry is, according to information received from the U. S. Engineers' Pittsburgh office, about one and one-half miles.

(Respondents' Exhibit F-43, Witness Kern, received in evidence.)

(73) Exhibit No. F-44 is a copy of Witness Vilas' Exhibit No. 155 in Docket 25566, indicating a vessel rate of eighteen cents per net ton on a single barge load of coal from Moundsville Mine to Martins Ferry, Ohio, and the transfer thereof to railroad cars at Martins Ferry.

The distance from Moundsville to Mertins Ferry is thirteen miles.

(Respondents' Exhibit F-44, Witness Kern, received in evidence.)

Exhibits F-41 to F-44 constituted the evidence which formed the basis for findings of the Commission with respect to barge rates which I quoted above.

Whether or not the foregoing rates properly reflect what is being charged for floating coal on the Monongahela and Ohio Rivers is problematical, but, based upon the best information I have been able to develop, the evidence of Mr. Vilas indicated higher than normal barge rates.

For example, the City of Cleveland, Division of Light and Power, on May 26, 1933, received bids for 100,000 tons of two inch nut and slack coal classified as Grade A, and 50,000 tons of two inch nut and slack coal classified as Grade D.

The difference between Grade A and Grade D, I under-
[fol. 1408] stand, involves the heating qualities of the coals. One concern submitted bids involving transportation via rail and river, and these afford very interesting information with respect to barging costs. (75)

The Valley Camp Coal Company produces coal of Grade A quality at a mine located at West Brownsville, Pennsylvania, and quoted an f. o. b. barge at Conway Docks cost of 92½ cents. This figure included the cost of the coal plus that of barging it 75 miles from West Brownsville to Conway.

The bids showed as the present freight rate $1.45, which represents the ex-river rate from Conway and Colona to Cleveland of $1.27 plus six cents surcharge, plus twelve cents transfer charge.

The f. o. b. Cleveland cost of the coal was stated at $2.37½.

This bidder also bid on Grade A coal from the same mine at West Brownsville an f. o. b. mine cost of 84 cents, plus a freight rate of $1.90, being the Pittsburgh district all-rail rate of $1.84 (76) plus six cents surcharge.

The f. o. b. Cleveland cost of all-rail coal was, therefore, $2.74, or 36½ cents higher than the same coal moving to the same point via river and rail.

These figures, in addition to indicating the disadvantage at which the all-rail coal must now be marketed at Cleveland, give some light as to barge costs.

I have stated that the f. o. b. barge cost of the coal at Conway docks was 92½ cents and the f. o. b. mine cost of the all-rail coal was 84 cents.

[fol. 1409] It appears proper to assume that the f. o. b. mine cost of coal should be the same whether it is loaded into railroad cars or barges and, based on this assumption, the river charge from West Brownsville to Conway, a distance of 75 miles, was only 8½ cents per net ton. (81)

The same mining Company submitted to the City of Cleveland a bid on the grade D coal, to be shipped from a mine at Moundsville, West Virginia, viz barge to West Wheeling, Alexander mine, Bridgeport, and thence rail.

In this instance the f. o. b. cost of the coal on cars at West Wheeling is shown as 76 cents, the rail freight $1.33, being the ex-river rate of $1.27 plus six cents surcharge, and the f. o. b. Cleveland cost at $2.09.

Unfortunately, no bid was submitted on the basis of the all-rail rate from this mine and we can not, therefore, by a process of deduction arrive at the portion of the total cost which reflects the barge rate.

However, the lowest f. o. b. mine price of all-rail grade D coal which was bid was 63 cents, which would indicate a barge rate, including transfer to railroad cars, of thirteen cents per ton, which is two cents lower than the evidence in I. & S. Docket 3619 indicated. (82) That 63 cents f. o. b. mine bid was made by Clyde E. Speer Coal Company for shipment from Penobscot No. 1 and 2 Mine at Hudson, Pennsylvania, and Enowa. (86)

[fol. 1410] However, the lowest f. o. b. mine price of all-rail grade D coal which was bid was 63 cents, which would indicate a barge rate, including transfer to railroad cars, of thirteen cents per ton, which is two cents lower than the evidence in I. & S. Docket 3619 indicated.

Mr. Gutheim: May I ask, Mr. Kern, if that lowest price of coal was a price from the same mine as that from which the coal was moved by barge?

A. No, I have stated that it was not. However, (86) the mines are just across the State line from each other. Enowa, Pennsylvania, is right near the Pennsylvania-West Virginia State lines, and the Alexandria mine is just over it.

(Narrative resumed.)

I have recited at length the various barge rates which have been testified to before the Commission and which I have not been able to develop elsewhere, in order to show that the Commission's former reports and finding as to cost of barge transportation were erroneous.

In my next exhibit, F-45, I have attempted to show from the statistics published by the Chief of Engineers, U. S. War Department, just what the Federal subsidy amounts to in the instance of freight traffic moving within the Pittsburgh district which includes the Youghiogheny, Monongahela, and Allegheny Rivers, and the Ohio River to Powhatan Point.

(Respondents' Exhibit F-45, Witness Kern, received in evidence.)

As will be noted, I have taken the actual costs of improvements in the Monongahela, Youghiogheny, and Alle-

gheny (88) Rivers and a proportionate cost of the improvement of the Ohio River up to June 1, 1932 and have added [fol. 1411] maintenance and operation charges to June 1, 1931.

The total of these amounted to $78,708,724. I then computed interest charges on basis of five and six per cent and added to such the amounts expended by the Government during the fiscal year June 1, 1931 to June 1, 1932, and arrived at what I have termed total expenses to the Government for that year. These, using the five per cent interest rate, totaled $6,228,321, and, with six per cent interest rate, $7,015,408. By dividing the total traffic which moved within the Pittsburgh district during 1932 I found that at an interest rate of five per cent the cost to the United States Goverment was 49.2 cents per ton of freight transported, and at six per cent it was 56.4 cents.

Using the average freight transported for the five year period 1928 to 1932, inclusive, costs to the Government were 24.2 cents and 27.3 cents, respectively.

Of course, in submitting this evidence I know that the calculation is not and can not be exact because the reports of the War Department are not in sufficient detail to permit this. However, the compilation does give some idea of the money being expended by the United States Government to foster river traffic.

I have not included in this calculation any depreciation (89) charges, which would more than make up for any contention that the interest charges I have used are excessive.

The average useful life of a lock and dam are variously estimated at from 35 to 50 years, which would indicate that the minimum depreciation charge would be two per cent per [fol. 1412] annum. In considering this showing it should, of course, be understood that the river improvements are entirely supported by the Federal Government by appropriations from taxes and that the records of the railroads show that about eight per cent of their gross revenue is paid annually in taxes of one form or another. To arrive at the approximate amount of the Federal Government's subsidy as expressed in units of net tone handled and to confirm the conservativeness of my calculation, it has been estimated that "the taxpayers' subsidy to the shippers on the Ohio River proper amounts to 7.46 mills per ton mile."

By multiplying this figures of 7.46 mills per mile by the typical river distances shown on my Exhibit No. 13, the taxpayers' cost would range from $1.31 down to nine cents per net ton.

It would certainly seem that with the Federal Government contributing so greatly to the users of these rivers, which, as I have frequently said, comprise but a few companies, principally operators of coal mines and/or steel mills, whose principal (90) interests are situated entirely on the rivers, the carriers should not be required to make an added contribution from their revenues in the shape of rates which are less than are charged for corresponding all-rail movements.

Throughout my testimony I have made frequent reference to the fact that the ex-river rates as they exist today constitute an immediate menace to all-rail rates from the eastern Ohio, Pittsburgh, Connellsville, and Fairmont districts to the present ex-river coal destinations and that any [fol. 1413] extension thereof will similarly jeopardize other all-rail rates.

Cross-examination.

(92) By Mr. Martin:

I said that the petitioning carriers propose that to Cleveland and Lorain the ex-river rates from Colona and Conway should be $1.51, and to the same destinations the ex-river rates from Mingo Junction and other lower Ohio ports should be $1.74. Now, the $1.51 rate, if made effective, would leave a margin under the Pittsburgh all-rail rate of 33 cents for towing and transfer charges for coal moving from the Pittsburgh district, to equalize with the all-rail rate, twelve cents of which is fixed as transfer charge.

If the $1.74 rate became effective, there would only be (93) ten cents left for the towing and transfer charges of Pittsburgh district coal moving through Mingo Junction or other lower Ohio River ports. However, that difference of 10 cents would not have to accomplish about 45 miles additional river haul over Colona and Conway, because the coal which moves through those river ports and which was alluded to by your witnesses and counsel in the Ohio case

does not come from the same mines, but mines across the river or adjacent to the transfer points in question.

We will assume for the moment that we are talking about Pittsburgh district coal moving competitively either all-rail [fol. 1414] or river and rail.

If a shipper in the Pittsburgh district on the Monongahela River with a mine equipped to load either river or rail wishes to ship via Mingo Junction on this proposed rate of $1.74, he has a margin of only ten cents under the all-rail rate to ship his coal to Mingo Junction and transfer it to cars.

Q. While under your proposal he would have 33 cents margin to (94) work with if he were shipping via Colona or Conway.

A. That is the arithmetic, but, of course, you have got to bear in mind that there is twelve cents carrier-collected handling charges in one instance, whereas the handling charges are indefinite in the other. I do not know of any tariff that the Belmont Supply Company publish naming a charge. I did not inquire into their charge.

(Narrative resumed.)

I do not know of any charge that they have made other than twelve cents a ton for the lifting, but it seems peculiar to my mind that the f. o. b. cars on dock or f. o. b. railroad car rate of fifteen cents as appearing on Mr. Vilas' Exhibit 154 in the Ohio case and my Exhibit 43 here, would include a twelve cent lifting charge. It was performed from a mine a mile and a half away.

Taking the mines down the river, for purposes of illustration, (95) if a mine on the Ohio River in the Ohio No. 8 district wanted to ship to Cleveland and Lorain under your proposed rate from Mingo Junction, he would have no margin at all under the rate of $1.74 which was approved by the Commission in 25566. He would pay $1.75 for his ex-river [fol. 1415] movement plus whatever towing and transfer charges it would require to get the coal onto the barge at the river port, which is exactly the situation that W. & L. E. proposed during the hearings in I. & S. 3619. If he went to Colona and Conway and used our proposed rate of $1.51, he would have 23 cents margin for his towing and transfer charges, but he, of course, would then utilize a lower number of rail miles in order to get to Cleveland from Conway

and Colona. He would get the rail service in there from the river to the final destination, which ever railroad he used, but in unequal amounts.

I assume he would care nothing about the number of miles that the (96) railroad carried his coal, he is concerned only with the dollars he pays the railroad.

All of those compared coal rates in my exhibits comparing the present ex-river rates with other rates on coal are local rates. All of those local coal rates include assembly service at the mines as well as line haul and delivery service; they include a full railroad service, just the same as the ex-river rates include a full railroad service. I concede that on their present basis the ex-river rates are in the nature of proportional rates, but I do not concede the propriety of it. If by the character of the rates that you mean it is a previous transportation in a different form by water haul. Yes. (97)

I said that subsequent facts developed that the statement in hearing in I. & S. 3282 that the cost of barging the coal to Colona or Conway was 30 cents were not the river costs. They may have been right at the time.

[fol. 1416] I read from page 8 of that decision, Mr. Martin (163 I. C. C. 3 at page 8):

"In this proceeding there is no evidence to indicate what the level of the water rates, which are not subject to our jurisdiction, will be. The cost of moving coal by water from the Nemacolin Mine in the Connellsville group to Smith's Ferry was estimated to be thirty cents per net ton by a witness in the Lisbon case, supra."

I did not check in the Lisbon case to ascertain whether or not the thirty cents included transfer as well as the cost of barging. (98) The only testimony offered in 3619 by respondents about the cost of barging coal was the testimony of the Government barge line corporation concerning the towing from its pool and the Monongahela to Colona and Conway, and to Mingo and Martins Ferry. I would say it would not change my views as to the measure of the ex-river rates from Mingo Junction and other lower Ohio River ports to Cleveland, Lorain, Manton and Massillon if the original suggestion of the respondents in 3619 (99) were put in effect, and the ex-river rates were restricted to coal shipped from mines on the Monongahela and Allegheny

Rivers only. I have endeavored to show to the Commission that ex-river coal should move on a basis of rates consistent with the all-rail rate adjustment.

Now, those transfer points are situated, not only in the No. 8 district, but at the extreme end of the No. 8 district, as measured in terms of miles to northern Ohio destinations, and I do not think that if I had the job of making a [fol. 1417] rate that I would under the circumstances make the rate less than what you charged mines in the immediate vicinity of these transfar points.

I would set the rates that a shipper of ex-river coal in the Pittsburgh district would have to pay, 23 cents more for his rail service out of Mingo Junction to Cleveland than he would pay out of Colona or Conway, although Mingo Junction is some 45 miles further down the Ohio River, because that is consistent with the all-rail rate structure that I am here advocating to be presented. (100)

So far as I have had any connection with coal rates, which covers a period of fifteen years or more, there has always been some necessity of protecting competitive relationships between iron and steel manufacturing points. I do not know whether, when the coke movement to the furnaces was supplanted by the coal movement, and the coal went on the river to the mills at Pittsburgh, Steubenville, and Wheeling districts, there was any adjustment of rail rates to the inland mills to maintain any competitive relationship.

The Dixon Mine at Cliff on the Montour, and the English Mine at Gregg on the Pennsylvania, shown on my exhibit 15 as the mines nearest to Colona and Conway are not river mines.

I assume the nearest point where the coal from Dixon on the Moncure would reach the river would be at or near Montour Junction, which is near McKee's Rocks. (101)

The mine on the P. & L. E. is the Patterson mine, as I recall it.

This coal from English Mine going to Conway would get [fol. 1418] down to the river at about the same general location, in the neighborhood opposite Montour Junction; it would not be a far distance. I do not know how far it would be up the river on the Pennsylvania before I found a river mine. You go up the Monongahela River and you get National No. 4, about opposite Patterson, but if you go up the Allegheny River you get a different picture. Na-

tional No. 4 is considerable distance up the Monongahela, but not up the Allegheny. (102)

On my exhibits 19 and 20, the heading is wrong, and should read 55 miles. There is a movement on all of these rates on Exhibits 19 and 20—that was the situation when the exhibits were first prepared, several years ago. The extent of that movement varies on these short haul rates like any other picture. Some is substantial, and some is probably small. It is the fact that the great bulk of the industrial coal movement right within the Pittsburgh territory is on the river. I will qualify that. The coking coals and coals to the electric light plants are on the river. I do not know what percentage of the total consumption of the district that is, but it is considerable; it is a very large part of the total.

I know something about the extent to which this short-haul coal in the Pittsburgh area has been going to truck movement on the highways in the last few years (103) and probably the best way I could state it is that in the instance of a domestic consumer where the use of a truck avoids the handling through a coal yard, the truck is preferred.

In instances, however, where industries have private sid- [fol. 1419] ings using coal in carload lots, the preponderance of the traffic moves by rail. Obviously there has been a shift of tonnage from movement on these short-haul rates to the highways, because it is only in the past four or five years that the highways have been a factor in our transportation set-up.

I have heard a lot of figures, but I do not think anybody knows accurately how much that shift of tonnage amounts to.

I mentioned the fact that these short haul rates on Exhibit 19 and the later ones apply in the same general territory as the Conway and Colona movement to Youngstown. On Exhibit 38 we show a rate to Conway that takes you right up to that stretch of track along the Ohio River from Conway and Colona to Youngstown (104).

I think the preponderance of the rates shown on Exhibit 22 apply from the interior mine toward the river.

I am not informed whether there is any absorption or any absorption of switching charges on the ex-river coal delivered in the Youngstown area.

My Exhibit No. 30 will show the true situation. The first ex-river movement out of Conway was during the week beginning September 11th. As to Colona the first movement was during the week beginning August first. (105)

However, the rates from both stations were in effect on the same day.

I am informed that domestic coal has moved on the river [fol. 1420] rates, but I cannot tell you the particular retail dealer that got it. I do not know about the volume of it except that at least two companies have experimented with it, and one company put in facilities to make those shipments. They ship run of mine coal in the barge, then they lift it out of the barge and run it through these sizing and screening plants, and get slack and sized coal, which is shipped in those forms to destination. The mines are doing it, the mines that float the coal on the river. Incidentally, however, one of the companies that experimented is also a retailer. (106)

I cannot say whether Exhibits 19 and 20 are duplicates of exhibits offered in I. & S. 3282 in 1929 by Mr. Carbine as his exhibits. The object was to bring those exhibits down to date. Since Mr. Carbine put in Exhibit 21 in this case in 1929, there was no further study made to determine whether there were actual movements between the points indicated on our Exhibits F-19 and F-20, but I conferred with the Pennsylvania Railroad, and they told me that those rates were still suitable for comparative purposes.

The rates were still there and the mines were still there, but they did not, of course, go to their billing records to find out if the movement Mr. Carbine referred to was still going on. That is something we necessarily assumed, so that, as far as the captions on those two exhibits of yours are concerned, they really speak as of four years ago, subject to what I have just said.

[fol. 1421] Q. Is that same thing true of your Exhibit F-22, which seems to be a duplicate of Mr. Fitzpatrick's Exhibit 29 introduced in 1929 in I. & S. 3282? (107)

A. Yes, my answer would generally be the same, with this addition applicable to both of your questions, that we feel that these are active and representative rates in this short-haul adjustment.

(Narrative resumed.)

It may be true that with respect to the group of exhibits of yours, F-19 to F-22, inclusive, there are many more points from these various mines for which the same rates apply that are longer than 55 mile hauls, although I doubt the advisability of the word "many".

We think these rates typify the level of rates as they obtain. We stopped at 55 miles because we thought that that was as far as we should go in dealing with a rate for 41.9 miles.

I rather think, and this is an opinion, that if you average all of the points you would get distances which, in most cases, would be less than the maximum distances appearing upon the exhibit. (108)

The caption of the column of the tabulation from which I read off to the record in my direct testimony the figure of 92.5 cents reads: "Cost f.o.b. mines" but, as a matter of fact, the cost represented by the 92.5 cents is f.o.b. barge at Conway, for this reason, that when you add the 92.5 cents to the $1.45 rail rate, you get the cost to the City of [fol. 1422] Cleveland of $2.375. (109)

My assumption that the 92.5 cents is an f.o.b. barge at Conway cost is one of two that I could have made, the other being that the Valley Camp Coal Company barged the coal for nothing.

Redirect examination.

By Mr. Bull:

The ex-river rates applying from Colona and Conway are limited as to origin (110) only to the extent that they apply on coal which comes to the railroad at those points from a barge.

The ex-river rates applying from Mingo Junction and Martins Ferry and other points on the Baltimore & Ohio and Wheeling & Lake Erie are not limited in any way as to the points of origin of the coal.

As I understand it, all the ex-river rates are published in the same kind of tariff. I am reasonably sure of that last statement.

I do not have the tariffs. The only difference I know is that one has a handling charge and one has not. There might be the difference that the Wheeling & Lake Erie and Baltimore & Ohio rates are published to apply from mines

on the Monongahela, Ohio, and Allegheny Rivers, but I cannot say. I cannot say that it means anything from a practical standpoint.

Recross-examination.

By Mr. Martin: (111)

[fol. 1423] None of that coal has ever moved from the Kanawha Mines. None of it could move under the tariffs, and I will add the Green River.

By Examiner Simmons:

The transfer charges at Colona and Conway are published in tariffs filed with the Commission. I know that those at Martins Ferry and Mingo Junction are not, because the only transfer charges published by any railroad are those of the P. & L. E. and the P. R. R. at Colona and Conway.

There is not any movement from inland mines down to the river and then up the river to Colona and Conway (112) and Mingo Junction, and then by rail to destination. All of this coal is loaded at the river.

Examiner Simmons: How do you arrive at that $1.01, just by comparison with the other, that $1.01 from Colona and Conway to Youngstown?

The Witness: Yes, sir; that was by comparison generally, and specifically with the rate of $1.01 which this Commission has required to be published from the Massillon and middle districts to Canton and Massillon, Ohio for a slightly lesser distance.

Examiner Simmons: Just about the Holmes & Hallowell scale for the average distance, Colona and Conway to Youngstown; is it not?

The Witness: Yes.

There has been a rail and barge movement. (113)

John Hewes, Jr., was called as a witness, and having [fol. 1424] been duly sworn, testified as follows:

Direct examination.

By Mr. Fitzpatrick.

I am employed by the Baltimore & Ohio Railroad, as transportation assistant at Pittsburgh, Pennsylvania. The

territory over which I have jurisdiction is roughly on the east from Cumberland, and on the west to a point drawn through, we might say, Sandusky, Willard, and Newark, Ohio.

I have been in the operating and transportation departments from 1918. I have been in my present position, that of transportation assistant, since 1929. (114)

The nature of my duties is more or less varied, the principal of which, however, are conducting transportation, which involves making of schedules, maintenance of these schedules in service which they are intended to perform, distribution of equipment, both freight and passenger cars. In connection with those duties I am familiar with the method of handling and transporting coal from mines in western Pennsylvania, in West Virginia, and at or near the Ohio River, served by the Baltimore & Ohio. I made a rather detailed investigation of the only river-rail facility that is located on the Baltimore & Ohio on December 1, 1932, which, judging from subsequent investigations that I have made, is characteristic and I think might cover your question. This operation is located at what we call West Wheeling and is the plant at which ex-river coal is received by the Baltimore & Ohio.

[fol. 1425] The operation at this point began on August 17, 1932, in which month twenty cars were loaded. In (115) September, 144 cars; October, 187; November, 157; for a twenty-nine day period in that month, or a total for the three and one-half months period of 508 cars.

Coal was actually loaded on 58 days out of this period, with an average loading per day worked of 11.4 cars.

The Baltimore & Ohio tracks at this point afford a setup for twenty cars with one spotting.

The coal is shipped by the Valley Camp Coal Company from their Alexandria mine at Moundsville, West Virginia, this mine being owned, I understand, by the Wheeling Steel Corporation, and leased to the Valley Camp Coal Company.

The barge equipment consists of one barge that holds nine cars and two barges that hold five cars each. One tug will handle two barges of either size at one time.

The Alexandria mine, located at Moundsville, loads coal from the mine through a conveyor to the river, where it is dumped into barges, and at that point there is a screen which is in operation.

When I observed the operation at Alexandria mine there was no coal being loaded on that particular day, but there was a barge placed under the chute, partly loaded.

At West Wheeling the tug Criterion and two barges belonging to the Standard Sand & Gravel Company were working and loading coal.

[fol. 1426] This operation is performed with a derrick on a scow which (116) keeps the barge ahead, reaches over it, picks up the coal with a one and one-half ton dipper, moves it to the cars, the crane and barge drifting down alongside the cars as they complete each car.

When the barge is unloaded, the tug crosses over, gets the barge, drops it behind, and they start on the next barge. On this particular day they were loading twelve cars, and the maximum loading for one day so far had been eighteen cars for a single day.

When maximum loading is had, they simply start and work until they get through. In other words, there are no regularly assigned hours for this performance.

This operation is conducted on what is known as the Baltimore and Ohio river branch between Bellaire and Martins Ferry, and is about one mile south of Bridgeport.

Ordinarily the empties come from the north through Holloway and are set off by crews operating between Holloway and Brooklyn Junction at Bridgeport to the extent that they are required, and a switch engine takes them and moves them down this one mile from Bridgeport.

When the loading is completed, the switch engine picks the cars up and takes them to Bridgeport.

I described the service to and from the siding at which the ex-river coal is received, that service being out of Bridgeport. (117)

As the usual practice, the cars are distributed from [fol. 1427] Bridgeport and brought back to Bridgeport.

West Wheeling is about one mile, or between one and one-half miles south of Bridgeport, with reference to the mines from which the coal is received directly on cars by the Baltimore & Ohio. There is an inland mine about two miles north of Bridgeport. There are other mines in that same general location in the Wheeling Creek No. 8 district on the Baltimore & Ohio.

From my observation, I can not see that there is any difference from an operating standpoint in the service required at an ex-river facility and an inland mine or any coal mine loading direct to rail cars on the Baltimore & Ohio. This rail siding on which the ex-river coal is received is open to any consignee or any shipper. (118)

Previously that siding was used for the unloading of sand and gravel from the river, and I imagine, although I can not state definitely, because my experience in that territory does not extend that far back, that was the real service for which that track was put in, judging from its position. I have visited West Wheeling since an investigation that I made on December 1, 1932. In the course of my duties. I can recall three times that I have been in that same locality since December 1, 1932.

From the standpoint of the service performed by the Baltimore & Ohio, there has not been any change since the detailed investigation as to which I testified.

I did not visit the Alexandria mine on this particular day when barges were being loaded with coal, but I have been at that mine since December 1, 1932, when they were actu- [fol. 1428] ally loading barges from the mine tipple. At that point they have facilities for screening, as far as I was able to develop, making two separations, lump and slack. There is no screening device at the present time at West (119) Wheeling. You take the coal right out of the barge and deposit direct into the railroad car.

I have been to Martins Ferry and have viewed the operation at what they call the Belmont Supply Company's track. That is the one to which I refer. That plant is not served by the Baltimore & Ohio; it is served by the Wheeling & Lake Erie.

They have limited screening facilities at that point. The coal is lifted from the barge by a land-locked derrick and deposited in a sort of bin that has a sloping floor and a screen in that floor, and, as the coal rolls down over this sloping floor with the screen inside, the lumps roll into the car and the slack is deposited onto the ground.

It is necessary again to pick up the slack from the ground and deposit it in the car, which really causes a second operation on the actual loading of the slack.

The screening is done after the coal leaves the barge or (120) is raised from the barge. I have actually observed coal being handled through the facility at Martins Ferry

into railroad cars; the coal which I observed being loaded into cars at Martins Ferry was brought to Martins Ferry in regular barges.

I have observed the loading of coal into cars at Martins [fol. 1429] Ferry brought there by other means of transportation. On the particular day in question, December 1, 1982, when I visited that plant, I found trucks transporting coal from what is termed a bank mine up on the hill in the State of Ohio, which brought the coal down and dumped it on the ground, and this stiff-legged derrick at this facility then picked this coal up, after being dumped by the trucks, and deposited it in the railroad cars on the same siding onto which the coal from the barges is also loaded.

The truck coal was being handled at Martins Ferry through the same facility and in the identical manner that the ex-river coal would be handled from barges, except for the feature that I did not notice them attempting to screen this particular coal on this day. The railroad siding on which the coal was being loaded was the same siding. (121)

Cross examination.

By Mr. Martin:

When I described a typical loading or assembly service at a No. 8 mine and when I described this last operation of taking the coal from the trucks, dumping it on the ground, picking it up with a derrick and putting it into the cars, it was not my intention to imply that the handling of that coal from the dump pile by the derrick into cars is typical of the assembly service or the loading of coal at mines in the No. 8 district. I was just answering Mr. Fitzpatrick's question, which I imagine was asked to show that on this same facility there was being loaded coal direct from a mine and also coal from a barge. That was my impression. That [fol. 1430] would not be a typical operation in the No. 8 district. This is a little snow bird mine that this coal was coming from. It would be unusual operation from a wagon mine. (122)

I would not attempt to make the statement that the assembly operation is exactly the same at all mines. Some assembly service at mines is undoubtedly more severe than at others. So would the assembling and gathering up of coal from miscellaneous river rail facilities very consider-

ably. Speaking in a general, average way, the service is the same on the river rail facilities as it is at the mine. As to whether it is the same as the more severe operation, or the same as the less severe operation, I can only go by the one facility on our railroad. Comparing it with an inland mine having a track capacity of twenty cars, I would say that there would be no difference between the river rail facilities with twenty car capacity track and an ordinary inland mine, of the same capacity, the same parallel layout. They are not all parallel layouts, but drawing a comparison between the set-up as it exists at West Wheeling and comparing it with an average set-up as it exists at West Wheeling and comparing it with an average set-up (123) at a mine at an inland point, obviously there could be no difference between the two operations. But all the inland mine setups are not, of course, the same as at West Wheeling. (124)

(An adjournment was taken until 10 A. M. June 27, 1934.)

(Hearing resumed pursuant to adjournment at 10 A.M. Tuesday, June 27, 1933.)

[fol. 1431] W. R. TRIEM, was called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

(125) My name is W. R. Triem, Superintendent of Freight Transportation of the Central Region of the Pennsylvania Railroad, with headquarters at Pittsburgh, Pa. I have been employed by the Pennsylvania Railroad 23 years; all of that time has been spent in the operating department of the railroad.

I have jurisdiction from an operating standpoint over that portion known as the Central Region and extending from Altoona, Rochester and Buffalo on the East to Crestline and Columbus on the West.

I am generally familiar with the coal transfer facilities maintained by the Pennsylvania Railroad at Conway. That comes within my jurisdiction.

I am acquainted generally with the operations of the Pennsylvania Railroad in the so-called Mingo-Steubenville district and the handling of ex-river coal at the various points in that territory where it has been transferred from the barge to the cars. (126) That comes within my jurisdiction. Movements of coal from Conway, Youngstown, Cleveland, Lorain, Canton and Massillon come within my jurisdiction.

Movements from points in the so-called Mingo-Steubenville district of coal transferred from barge to cars to be transported to those same destinations come within my jurisdiction.

The facilities at Conway for the transfer of coal consist of a long boom, revolving crane, with a capacity of approximately 100 tons per hour. There is a track layout consisting of two tracks, the capacity being considered somewhere between 15 and 20 cars for each track. The cars are moved [fol. 1432] into position by an electric winch and after being loaded are shoved down out of the way, from which location they are then pulled by a switch engine into Conway Yard.

(127) As is usually the case in mine operations and general commercial operations, the number and type of empty cars are ordered through the agent who, in turn, instructs the yard to place these particular cars and the empties are then selected, prepared and taken from Conway Yard to the place of loading where they are loaded as described previously, namely, through the use of an electric winch, after which the loaded cars are returned to Conway Yard, and that constitutes the service that is in every particular similar to that which is performed at ordinary mines.

After the cars are brought into Conway Yard they are weighed, billed, classified and placed in outgoing trains exactly as they would be if the cars had been loaded at mines.

The engine places the empties, goes away, comes back at the end of the particular period or trick and moves the loads into the yard.

When this coal has been weighed and assembled in the yard (128) for movement to destination, it is intermingled with other cars of coal, particularly cars that have been loaded with coal in the Pittsburgh and Connellsville districts. Conway is an intermediate yard for the movement of all classes of traffic and this coal from the Conway transfer

dock is thrown into the general run of traffic at Conway from which point it is handled exactly in the same manner, involving exactly the same transportation operations as coal originating at coal mines as described. There is no [fol. 1433] difference so far as I can see in the transportation operations involved in placing empties and handling coal from the Conway transfer facilities as compared to coal originating at a mine in the same location with the same general track capacity and operating conditions. When the coal is loaded or transferred from the barge to the cars at Conway, I think in all cases it is correct that it is the first time that that coal has ever been placed in cars. (129)

As to whether from my operating experience I would say that the effect is to virtually place the tipple of the coal mines operating on the Monongahela and Allegheny Rivers at Conway, it is my personal opinion that the effect is to place the tipple of the producing mine at Conway so far as railroad operation is concerned. (130)

There are three facilities in the Mingo-Steubenville district from which the Pennsylvania Railroad receives coal. The first one is at the Carnegie Steel Coal dock at Mingo, which is served by the Wheeling & Lake Erie Railroad and which railroad performs all the switching and acts as the agent in that regard for the Pennsylvania Railroad.

The second one is the Carnegie Steel Company coke dock served by the Pennsylvania Railroad direct. So far as I know, the coke dock and supporting tracks are owned and maintained by the Carnegie Steel Company.

The third operation is the one where the Costanzo Mine [fol. 1434] coal is transferred at a location known as the Eastern Sand and Gravel Company dock. At this location the facilities and the track layout are privately owned, the switching being done by the Pennsylvania Railroad. (131) I am unable to state that those facilities are privately owned. I know that the Costanza Coal comes through that operation and that it has always been known to me as the Eastern Sand & Gravel Docket.

Q. Will you please briefly describe the operation at the first transfer in the Mingo-Steubenville District to which you referred substantially as you have described the operation of the facilities at Conway?

A. At the first location which is served by the Wheeling & Lake Erie Railroad empty cars are delivered to the

Wheeling & Lake Erie. They place the empties and return the loaded cars to us for which a switching charge is paid. There is nothing peculiar about this operation inasmuch as it is entirely a switching operation performed by the Wheeling and Lake Erie, and I am not competent to say as to what the exact operation of the Wheeling and Lake Erie is.

Q. Now, will you please similarly describe the operation at the second facility which you referred to, the Mingo-Steubenville district?

A. At the so-called Mingo-Coke Dock empties are taken from Mingo Yard with an engine which places the empties at the location of the dock, where they are moved and loaded by an (132) electrical contrivance. When 8 cars are loaded it is necessary to pull the loads and place 8 more empties, repeating the operation until the amount [fol. 1435] of coal to be transferred has been handled.

(Narrative resumed.)

That is because of the limited capacity of the track. The limit of that track is eight car lengths.

As to whether the operation is any different from the operation at a coal mine whose siding or track has a capacity of 8 cars and which mining operation we wish to serve in such a way that they can operate continuously, there is absolutely no difference in the operation from the one where the coke dock would be changed to a mine tipple. The operations would be exactly the same.

At the operation at the third facility, the Eastern Sand and Gravel Company dock, empty cars are placed and they operate by gravity (133) by the loading point and after the capacity of the empty track has been exhausted the loaded cars are removed and more empty cars are placed. I am of the impression that the capacity of that track is 14 or 15 cars but I am not certain.

There is no difference in this operation from that which would obtain if the transfer facilities were changed to a coal mine tipple.

At the present time the first facility of the Steel Corporation which I have described for the transfer of river coal is not being used. That is the facility where the switching is done by the Wheeling and Lake Erie.

Within the last few days the coal being moved through the Carnegie facilities has moved through the so-called coke transfer machine.

[fol. 1436] I don't know why the coke transfer machine is being used instead of the other operation. (134)

When the coal is loaded on the cars from the barge at any one of the three transfer facilities you have just described in the Mingo-Steubenville District, that is the first time that coal has seen the rails or railroad cars. I am reasonably certain that much of this coal is handled by conveyor system from remote workings along the Monongahela River directly into barges and is placed in cars for the first time at the operations described.

So far as our railroad operation is concerned, there is no difference in the operation as concerns the movement of this coal from Mingo as compared to the movement from a coal tipple located at the same location.

When the loads of coal have been pulled from these three facilities they are all taken to the adjacent serving yard known to (135) us as Mingo Junction, where they are weighed, billed, classified and dispatched in road trains in exactly the same manner and involving the same transportation operation as coal originating at mines in the Mingo Junction territory. In fact, this coal is assembled indiscriminately with coal originating at coal mines in the territory and moved to final destination in exactly the same manner as the coal originating at coal mines.

By coal originating in the same general territory I refer to coal originating in the so-called Ohio No. 8 district.

The Mingo Junction Yard is utilized for the assembly, weighing and classification of coal produced in that portion [fol. 1437] of the Ohio No. 8 District. I am asked to contrast the service on coal originating in Ohio No. 8 District and the coal originating from the river barges.

Coal from the river barges and coal from mines in the Ohio No. 8 district served by the so-called Wheeling Branch of the Pennsylvania Railroad lies along the Ohio River between Mingo Junction and Bellaire. (136) That coal is assembled at Mingo Junction, from which point, together with all traffic available for movement to Cleveland, it is moved in Cleveland Destination trains. At the present time I believe we are averaging about two trains a day. These trains take all the traffic from the steel companies,

miscellaneous traffic and the two different kinds of coal mentioned direct to Cleveland.

There is no difference in the movement of one kind of coal as against another kind of coal from Conway. It loses its identity as soon as it has been classified into the destination tracks and thereafter becomes merely destination traffic, and is accorded exactly the same transportation in every respect as any other kind of coal. This coal is intermingled with cars of coal from the Pittsburgh-Monongahela-Fairmont districts, which is moved into Conway all rail. (137) It has previously been weighed. Youngwood, Shire Oaks and Scully act as the assembly and distributing yards for the coal I have described. As to that coal compared with the ex-river coal from Conway, there is absolutely no difference in the service except as to the number of miles which the coal moves from rail origin to destination.

[fol. 1438] Cross Examination.

By Mr. Gutheim:

Conway as the location of this transfer facility and Conway Yard, as I use them, are synonymous.

To switch it from the place where we take our empties at Conway Yard to move them up to the track that serves the loading boom involves a movement from empty westbound classification (138) yard which is located about the middle of the large Conway layout east through the yard to an interlocking plant at the east end of the yard, where a crossover movement across the eastbound freight and passenger main tracks is necessary to reach this facility which I would judge is about a mile east of the interlocking plant.

When we take the loads from the boom track back to the outbound yard, that movement is the reverse, of course, up to the interlocking plant, thence through the interlocking plant to the eastbound or the westbound receiving yard, which is again located about the middle of what we call the general Conway Yard layout, probably a two-mile operation. Half of it is in the direction of the destination.

I believe that ordinarily the handling with our one switch from the boom tracks up to that yard is accomplished in a cut of 15 to 20 cars, usually at the end of an eight-hour trick or the completion of an operation, and I can not an-

swer directly how long it takes. I could give an approximation but it would merely be an opinion. (139)

Except for an odd movement westbound to serve mines [fol. 1439] under unusual conditions, these mines located along the Cleveland Division near Wellsville, there is no distribution of empty coal cars to mines from Conway. We deliver the empty coal cars from Conway to other yards from which we do distribute to mines in large numbers. The yards to which we take the empties from Conway are principally the Shire Oaks and Scully.

When we get the empties to Shire Oaks and Scully the cars are classified as to class and to a certain degree as to condition at Shire Oaks and trains are made up with these different classes of cars in proper order from different tracks before they leave the Shire Oaks Yard for the mines. When I say in proper order I mean according to the requirements of the individual mine.

When you get to the first mine with your train of empties, you set off the empty cars that have previously been blocked (140) for that mine, generally working the mine by switching out the loads, either taking them along or setting them aside to be picked up when you return, and you repeat the process at each succeeding mine.

In that operation at the individual mine you put the empties upon a storage track above the tipple. In pulling the loads from the mine in working the mine we have, in the majority of cases, some switching to be done because of the unconsigned coal that remains at the mine and has not been billed out for that day's movement.

Assuming that after having worked the mine we pick up [fol. 1440] the loads from that mine with the engine that delivered the empties, either place the loads on a convenient siding or storage track to be picked up by this same train or other trains or hold onto them if the train is moving in the direction of the assembly yard. Having worked that first mine in that manner, the train of empties goes through and simply repeats this same operation over and over again until it has used up the time that has been allotted to it. (141)

How many mines we would serve in that manner on one run out of a distributing yard would depend entirely on the conditions at the various mines, the track arrangements, the traffic that was being handled, the arrangement of the

main line, and so forth. Ordinarily, I would say that a mine run will handle from 10 to 25 loaded cars an hour.

It would be a fact that in normal times we might have to send several mine runs of empties out of a yard like Shire Oaks in order to take care of all the mines attached to that yard.

As to whether we work one mine we leave the balance of the train of empties on the main line while we do the switching in and out of the mine; in the territory east of Conway, in the Monongahela territory, branches are constructed to serve most of these mines and in that case the empties are loaded but remain on the so-called main track of the branch.

On other portions of the railroad where the mines are connected directly to the main tracks it is sometimes necessary to leave these empties at some siding clear of the main track while you do your work. In that case we have to brake the train. As is generally understood, a few brakes [fol. 1441] are set up (142) to hold the train of empties.

It is generally true that at most of these mines in switching loads out we have to separate the billed and the unbilled loads.

The limit of haul involved in the distribution of empties from these distributing yards is determined by the necessity of returning your crew to the originating point either within its overtime limit or at times within its 16 hour limit. Taking, for instance, Shire Oaks, the maximum haul, ordinarily, of a train distributing empties out of that yard to the farthest mine it could reach, it would be a number of miles. In some cases I would say more than 20,—I don't know definitely.

The same thing is true to a lesser degree at Youngwood, but practically the same degree at Scully.

After these cars loaded are then brought back into Youngwood, Shire Oaks and Scully, the next process involved (143) in moving them to destination is weighing, billing, classification and dispatching of trains to destination or to intermediate yards for combining with other traffic. On traffic destined to say northeastern Ohio, Conway would be such an intermediate yard.

I am asked would there be instances in which such trains originally dispatched from Youngwood, Shire Oaks or Scully would be handled intermediately at Conway and the cars there placed in other trains for movement north. In

periods of light traffic trains are assembled at Shire Oaks and Youngwood for Conway and beyond, and the traffic is [fol. 1442] broken down there into destination trains. There is no other large volume of traffic that we assemble at Youngwood for movement north other than the coal and the coke.

There is other large volume of traffic that we assemble at Shire Oaks for movement north. That is the steel and general merchandise traffic that originates along the Monongahela River. (144) The coal predominates.

Scully is primarily a merchandise and miscellaneous traffic yard. I would say that the coal takes second place at Scully.

There is a service at Conway of more or less continuous dispatch of west and northbound freight. There is always tonnage in Conway that is moving north and west. The assembling conditions at all mines are not the same and they are much more severe at some than at others.

The unloading capacity of our boom at Conway is 100 tons per hour.

The ex-river coal that we handle through Conway (145) is of more than one kind. As to size, I believe there has been some run-of-mine and some prepared coal, so that they would be different in that respect.

When that coal reaches us at Conway, we don't know that we have to take it out of Conway or if it is coal that is going to stand around as an unbilled load for awhile. We have not yet had to switch out any unbilled loads at Conway.

Mingo Yard is an assembly yard for coal mines in Ohio [fol. 1443] No. 8 District. There are other assembly yards in that district.

Wierton Junction Yard is a large assembly yard for miscellaneous traffic but we do not consider it an assembly yard for coal.

I believe that means that the Mingo Junction Yard is the only assembly yard for coal on the Pennsylvania Railroad in the No. 8 district.

I don't know the exact distance from the center of the Mingo Yard to (146) the so-called Coke Plant Dock of the Carnegie Steel Company which I described in your direct examination.

I don't know the distance which we move empty cars from our Mingo Yard to that dock, because I don't know

the exact distance from the Mingo Yard to this particular facility.

I do not know the distance from the Mingo Yard, on the average, to the mines from which coal is moved to Mingo Yard in assembly service.

Q. Then your conclusion given in your direct examination that the assembly service of local No. 8 coal and the assembly service of this ex-river coal were the same, was made without any knowledge of the distance, relatively, which the local coal moves into the assembly yard and the distance which the ex-river coal moves into the assembly yard.

A. Their statement would be correct if I had said what you said I said.

Q. Well, I don't want to put words in your mouth. I want to have you state whether or not in your direct tes- [fol. 1444] timony, whatever you said, you had in mind, or knew, first, the distance between the coke plant of the Carnegie Steel Company and Mingo Yard, on the one hand, and the distance between the local No. 8 mines and Mingo Yard on the other? (147)

A. I don't know those distances.

(Narrative resumed.)

The distances between Mingo Yard and the mines are greater, on the average, than the distance from the coke plant at Mingo to our Mingo Yard.

The operations incident to the assembly of Local No. 8 coal are substantially the same as the operations incident to the assembly of coal at Shire Oaks and Scully, which I described in response to Mr. Gutheim's question.

I think there is not any difference in the rates of pay of the crews working in the assembly service of Local No. 8 coal and the crews working in the assembly service of this ex-river coal at Mingo Junction, because if I may qualify, when I was Trainmaster on the Panhandle Division the yard crews were paid road rates in the Mingo-Wierton territory, and I think they are still paid the road rates.

There is no difference whatever between the assembly service given this commercial coal from the Ohio No. 8 mine and the assembly (148) service given lake cargo coal originating at the same mine.

Q. By Mr. Martin: You stated in response to a question of your counsel that, in your opinion, so far as railroad operations are concerned, the operations of your company [fol. 1445] with respect to the ex-river coal received at Mingo Junction are the same as if a mine tipple were located there. Have I stated your answer correctly?

A. That is correct.

(Narrative resumed.)

Without meaning to quibble, I would say that this ex-river coal received by us at Mingo Junction has been moved a considerable distance prior to its receipt by us, (149) but as to the transportation involved I am not competent to answer. I don't know what it consists of.

By Mr. Martin:

I distinguish between movement and transportation. I think that it is a general knowledge that that coal has been dumped by the river tipple into a barge and the barge has been made up into tow and moved down the river by a tow boat to our unloading plant from which the coal is shifted by an unloading crane into the freight cars. That all of that service occurs to the coal prior to its receipt by us is true, as to specific coal originating at specific points but it is not necessarily true of all coal that might be transferred through such a facility. It is true as to all ex-river coal so far as the movement of coal up to the present time is concerned.

[fol. 1446] By Mr. Baker:

I am referred to my Exhibit F-16, and asked if there are any other assembling points on this Pittsburgh District coal on the Pennsylvania lines. Coal is assembled in small lots at points on the so-called Conemaugh Division, which has lines on both sides of the Allegheny River east of Pittsburgh and is weighed at local scales on that division but I would not consider that there are any other principal assembly points other than the ones I mentioned.

By Mr. Orcutt:

The assembly I have just spoken of is a small amount and there is some coal that moves westbound through Conway from Verona and in that district. I don't know of

any coal outside of railroad fuel off the Alexandria Branch [fol. 1447] moved westbound through Conway or the Turtle Creek Branch.

Some of it is handled through Youngwood and some of it comes into Pitcairn. Pitcairn is used for the assembling of some coal, but a relatively small amount.

I don't know whether Youngwood actually does handle today the coal that comes off the Youghiogheny Branch of the Yukon Branch. I would like to explain that the operation in that district varies from day to day depending upon conditions. Youngwood as a yard has (152) been greatly reduced in the past two years.

If coal from those branches were not handled at Youngwood, very likely we would handle it at Pitcairn for Conway and beyond.

Q. How far west along the Panhandle does the Scully operation extend? Is it to Collier or beyond that into West Virginia?

A. No. Most of the coal breaks at the top of the grade at Bertha. The Bertha mines and the mines on the east side of the slope—the coal from those mines goes into Scully and the balance of it goes west, as a general proposition.

Q. Where is Bertha with reference to Collier?

A. About 5 or 6 miles east.

Q. How far is it from Scully to Bertha?

A. It would be just a guess, but I would say 25 or 30 miles.

By Mr. Bull:

I cannot allocate the tonnage of coal shown in Mr. Kern's Exhibit F-30 showing actual tonnage movements to these river ports, and say which facility is included in what he [fol. 1448] shows as Steubenville and what he shows as Mingo Junction because I have no way of knowing how (153) Mr. Kern arrived at those figures.

The facility which I described at Mingo Junction from which we handled coal at one time in connection with the Wheeling and Lake Erie, the latter line making the switching charge, I said had discontinued or had not recently handled any coal via that facility. That is recently, within the last week or ten days I should say.

I can not answer definitely whether or not that is the facility which the Wheeling and Lake Erie uses at Mingo Junc-

tion to handle coal which it is transporting over its own line from Mingo Junction.

I understand that the so-called coke machine handles Clairton coke for consumption within the Carnegie Steel Company's plant and the operation at Steubenville, Eastern Sand & Gravel outfit, handles gravel and sand as well as ex-river coal. The facility at Conway is our own facility. (154)

Generally the movement up to Conway has been coming up in tows, but I can not state the minimum number of barges there might have been. I think there have been some occasions where two or three barges were placed. Generally more than two or three. We have to get those unloaded within a certain length of time. There is an understanding, generally, that the barges will be required empty for the convenience of the towing company by a certain time.

[fol. 1449] It is quite obvious that you can unload a barge in eight hours. That is practically three barges a day; we work in 24 hour shifts.

Q. Has that been because the coal all comes at one time or simply because you want to work 24 hours?

A. The convenience of the shipper and the consignee are involved, of course.

(Narrative resumed.)

When we get a tow up there we have to concentrate our work so as to get that tow unloaded and out of the way. (155) It is to our advantage to do that, and in case there is another tow coming along we will be glad to handle it. If we did not do that we would have to delay the barge beyond the time I spoke of a moment ago.

I think they run about six barges to a tow, ordinarily.

By Mr. Gutheim:

I know that the Pittsburgh and Lake Erie unloading facilities are across the river at Colona.

On this matter of having to get the barges unloaded, it is my understanding that their facilities are such that they can generally operate between three to five times as fast as we are operating.

Redirect examination.

By Mr. Orcutt:

I knew that there was coal moving between Nemacolin mine and the Youngstown Sheet & Tube Company at Youngstown. It is true that some time ago an operating arrangement (156) was set up whereby that coal could move direct from the Nemacolin mine to Youngstown in train- [fol. 1450] load lots of 90 cars or more. Over a number of years we used to operate trainloads of coal from Nemacolin to Youngstown, usually placing the coal in less than 16 hours from the time the train was ready at Nemacolin mine. That operation was on a very definite schedule.

The empties went back in trainload lots from Shire Oaks; at one time we served Nemacolin direct, I believe, from Shire Oaks.

The Monongahela Railroad now handles the empties to the Nemacolin mine and the loads from the mine and delivers the coal to us at Brownsville, South Brownsville, from which point we have operated crews direct to Youngstown.

When that coal or those loaded cars are pulled out from the Nemacolin mine, I think there is not any classification as between billed and unbilled cars. It has been moved direct in the original train lot without classification (157) at intermediate points.

It has moved that way I will say within the past six months; I believe not within the last three months or within the last 30 days.

To the best of my knowledge the bulk of the tonnage moving through Conway is this Nemacolin coal moving to Youngstown.

I believe within the past two weeks that coal arriving at the transfers at either Conway or Colona has been moving at the rate of a tow of six to eight barges every two days. The (158) total amount of tonnage involved, as I recall it, is about 20,000 tons of coal per week to Conway and Colona [fol. 1451] together.

Recross-examination.

By Mr. Gutheim:

If we get a tow of six barges every two days we get approximately 5,000 tons. If our boom will handle 100 tons an hour and we work three eight-hour shifts we will handle about 4,800 tons in two days.

It is correct that barges are arriving at Conway within about the limit of our unloading facilities. (159)

If the Pittsburgh & Lake Erie at Colona can unload more rapidly they can obviously handle more barges.

About this setup of the coal from the Nemacolin mine all rail, the Pennsylvania Railroad unfortunately did not handle all of that coal day in and day out. The Pittsburgh & Lake Erie got the rest of it. The Baltimore & Ohio did not get any, to the best of my knowledge.

I have not heard of an arrangement which contemplated we got it for one period and the Pittsburgh & Lake Erie got it for another period and the Baltimore & Ohio got it for a third.

I think that it is generally understood that there is competition between us and the Pittsburgh & Lake Erie. Competition does not necessarily give good service.

Examiner Simmons: You do not know what the approximate amount of your investment in your facilities at Conway is, do (160) you?

[fol. 1452] The Witness: No, I do not believe I am competent to say because I do not think I could get within 50 per cent.

Examiner Simmons: Mr. Orcutt, at the time of the hearing in I. & S. Docket 3619 it was understood your facilities at Conway and Colona were not completed. Will you give us a witness who can tell us the amount of the investment at Colona and Conway?

Mr. Orcutt: We can if it is desired. I had not planned to do that. That is, the investment at Conway?

Examiner Simmons: Yes.

Mr. Orcutt: I think the Pittsburgh & Lake Erie can furnish a witness who can testify as to the investment at Colona.

Examiner Simmons: Probably you can furnish that within 10 days.

By Mr. Orcutt:

Q. Do you have any knowledge, Mr. Triem, of the approximate amount of the investment in the facilities at Conway?

A. No, I do not. It is rather an involved sum of cost. There are a lot of things going into that that I would not know anything about.

Examiner Simmons: Can you furnish that within 10 days?

Mr. Orcutt: Yes, we can furnish it within 10 days I am quite sure. I am afraid we can not get a witness here before the hearing is adjourned, but I will be glad to furnish that (161) later.

Examiner Simmons: You will furnish the customary copies?

[fol. 1453] Mr. Orcutt: Yes. We can put the two figures together in one letter.

Examiner Trezise: It will be understood that you, Mr. Orcutt, will furnish the investment, the amount of investment at Conway and Colona.

Mr. Orcutt: Yes, separately contained in the same letter.

Examiner Trezise: All right.

Mr. Orcutt: Mr. Examiner, that concludes the case, for, I don't know whether to call ourselves Respondents or Protestants. We are protestants in one case and respondents in the other. That concludes our case with the exception of one witness whose exhibits are not ready and who will be here in the morning. We would like to reserve the privilege of putting him on. He will be very brief. The inquiry was made, I believe, by one of the Examiners this morning as to the tariff reference of the tariff carrying our 10-cent transfer charge at Conway and Colona. That transfer charge is named (162) in the same tariff naming the rates from those points. The Pittsburgh & Lake Erie tariff is I. C. C. 3073. The Pennsylvania Railroad tariffs are I. C. C. 924 and 966. One of those names the rates from the Wheeling-Steubenville District or the Mingo-Steubenville district. I name them both because I do not recall at this time just which is the Conway tariff. Reference to those tariffs will be found on the last page of our Exhibit F-8.

[fol. 1454] Mr. Fitzpatrick: Mr. Examiner, at this point, I should like to incorporate in this record by reference a

portion of Mr. Durham's testimony given in Docket 25566 in reference to the reasons that caused the Wheeling & Lake Erie to publish reduced rates from Ohio District No. 8 to Cleveland and other points. The testimony in question begins on the fifth line from the top of page 929 and ends on the third line from the bottom at page 941 of the record in Docket 25566. It appears in the volume of the hearing at Columbus, Ohio, December 20 and December 21, 1932. I have talked with Mr. Martin and he has said to me that he would not object to incorporating that testimony in this record by this reference. I take it, also, that all of the other parties here who are interested probably have this particular testimony, because of their part in Docket 25566 and that, therefore, it will be unnecessary to furnish additional copies. Anyone who should desire (163) that testimony, however, I shall agree to furnish a copy.

Examiner Treaise: Do you mind furnishing a copy of that for the record?

Mr. Gutheim: I think it should be furnished for the record, Mr. Examiner. I do not mean copies to all parties, but I think it should physically go into this record

Mr. Orcutt: I think that is true. Otherwise it will make it necessary to refer to the old record and we should have it in the record.

Examiner Treaise: If it is agreeable to the parties they [fol. 1435] need not have copies if they are all agreeable to that but I think there should be a copy in the record and if you will furnish that it will be received.

Mr. Orcutt: We will be glad to furnish it and furnish copies to such parties as desire.

(Discussion off the record.)

Examiner Treaise: It is understood between the parties that these pages of the record in Docket 25566 as indicated will be furnished at a later date within about 15 days and the exhibit relating to that testimony will be attached and (164) the whole thing will be considered as an exhibit in the case. (170)

[fol. 1436] R. R. Andrews was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

By Mr. Bull:

I am R. R. Andrews, District Sales Manager for the Receivers of the Consolidation Coal Company, located at Cleveland, Ohio. I have acted as District Sales Manager for the Consolidation at Cleveland since August, 1932. From February 1st, 1932, to August, I was Division Sales Manager at Cleveland, in charge of all Fairmont coal. I have had about 25 years' experience in coal sales.

The Consolidation is a large producer in the Fairmont District. It normally produces annually about 3,000,000 to 4,000,000 tons of Pittsburgh seam Fairmont District coal, which is about 30 per cent to 40 per cent of the Consolidation's total production. It is now operating eight mines in that district. The Fairmont District, as it is generally (171) known, lies in northern West Virginia and comprises parts of Marion, Harrison, Monongalia and Taylor Counties.

Northeastern Ohio is a very important market for Fairmont coal. Cleveland is the most important point in that territory.

In the sale of our Fairmont coal to the northeastern Ohio territory we encounter competition from producers in the Pittsburgh, Connellsville, Moundsville and Ohio No. 8 [fol. 1457] and Middle districts. We encounter competition with coal which does or may move under ex-river rates We encountered that competition on several of the largest pieces of steam business in the City of Cleveland, Ohio and vicinity, which would amount to from 200,000 to 400,000 tons, and on which there is prospect of ex-river movement, we have had the opportunity to bid on all of this business; some we have bid on and lost to ex-river shippers, some of it we refused to bid on knowing that we could not meet ex-river competition, and some of the business we did not bid on we afterwards learned went to ex-river. Some we have bid on has not, as (172) yet, been awarded, but the ex-river shippers have underbid us to a considerable extent on a delivered price basis.

As time goes on and consumers and shippers become better acquainted with the ex-river rates, our business in this territory on coal from the Fairmont field will suffer to a larger extent, because it will be impossible for us to meet

the delivered prices that the ex-river shippers are able to make due to the ex-river rate factor.

The difference between our all-rail Fairmont rate to Cleveland and the ex-river rate as it now stands is too great a handicap to overcome. The old differentials between the all-rail rates prior to August 1st, 1932 were: Fairmont 25 cents over Ohio No. 8; 15 cents over Pittsburgh and Moundsville, and 9 cents over Connellsville, which were the limits Fairmont coal could stand in competition for this territory. Any greater differentials or differences must result in con-
[fol. 1458] tinued loss of business. This is illustrated by the fact that when the Ohio rates were reduced in August and September of last year, we lost considerable tonnage as a result in the Cleveland territory. I am referring in that last statement to the all-rail rates.

The Consolidation has not any mines in the Fairmont field equipped with river tipples. (173)

Cross-examination.

By Mr. Martin:

Some of this competitive ex-river coal moved to Cleveland through, as I term them, the lower river ports around West Wheeling, and some of it through Colona and Conway.

Q. Did any of the coal from the Pittsburgh or Connellsville district move ex-river through the lower river ports to Cleveland or vicinity?

Mr. Bull (interposing): Are you speaking of business with which he has competed?

Mr. Martin: Yes; business with which he has competed and of which he has knowledge.

The Witness: I believe so.

(Narrative resumed.)

As an illustrative case, I believe that the coal to the City of Cleveland garbage plant from Costanzo moves that way. I don't know if Costanzo is in the Pittsburgh or Connellsville freight rate (174) district.

[fol. 1459] I am speaking of the Costanzo Coal Company, as shippers of the Wheeling Coal Company's coal that is mined on the West Virginia side of the Ohio River.

Alexander Mine on the Ohio River below Wheeling is moving coal to Cleveland ex-river. I do not know of any case of coal moving from mines on the Allegheny or Monongahela Rivers through the lower ports in competition with our coal. (175)

By Mr. Guthelm:

Not all my sales experience has been with the Consolidation. I have been with the Consolidation four years. I previously sold coal for Sandy Creek Coal Company, Mid-States Coal Dock Company and Dickinson Fuel Company. The Consolidation's market for Fairmont coal is not restricted to just this northeastern Ohio territory area. The Consolidation sells lake cargo coal. They sell some tidewater trans-shipment coal. (176)

J. E. Duffy was sworn and testified as follows:

Direct testimony:

I am Traffic Manager of the Butler Consolidated Coal Company, Martin A. Reiver, Receiver.

I was a witness in the original proceeding in I. & S. 3619.

In the original proceeding or hearing in I. & S. 3619 I [fol. 1460] stated that my company owned eight high volatile bituminous coal mines six of which were being operated. At the present time my company still owns eight high volatile coal mines, but only three are now being operated, the principal one of which is Wildwood Mine, located approximately 16 miles north of the city of Pittsburgh. This is the only one of the operations shipping or that has shipped into northeastern Ohio.

Wildwood was opened in 1928, and shipments started in December of that year. From the time the mine was opened, (177) we maintained branch offices in Cleveland, Ohio, and Youngstown, Ohio. The Cleveland branch was under the charge of the assistant to the President, and he had one salesman with him. The Youngstown branch was in charge of a district manager, and he acted as salesman. The Cleveland branch took care of the lake cargo business and industrial business from Lorain, Ohio, to Ashtabula and south to a line from Youngstown to Akron. The

Youngstown office took care of Youngstown, west and south of the Youngstow-Akron line.

On April 15th of this year we were forced to discontinue both these branches, due entirely to our inability to compete with coals from the Ohio mining districts and with ex-river coal. At the present time we have but one contract in the entire State of Ohio, and that is an open contract which was, in previous years, for very specified tonnages. So far, on that open contract, we have been shipping about two cars a day. Some days it is three cars, and then they skip a day; but it will average two cars a day. That is the only regular business we having going into the State of Ohio.

[fol. 1461] Previously we sold numerous industrials in the State, and since the month of June, 1932, we have not sold any of those industries. They are getting it ex-river and from the Ohio fields.

In the previous hearing I stated that the position of our company was that we were not opposed fundamentally to ex-river (178) rates, as such, but that we were opposed to the rates proposed by the carriers in that proceeding, because they were not properly related, in our opinion, to the all-rail rates. When the case was decided by the Commission on the figures that went into the record, the total transportation charge from river tipple mines on the Monongahela River in and around Pool 6 amounted to approximately the same figure as the all-rail rate from our mine, namely, $1.84 to Cleveland. This was satisfactory to us; but it has since developed that the total charge by barge and rail amounted and does amount to less, delivered, than the figures set up in the original proceeding; and I am here again in behalf of my company to say that ex-river rates, if on a basis comparable with all-rail rates, will not exclude us from northeastern Ohio, but that the rates as they now stand have excluded and will exclude us from that territory.

By Mr. John J. Fitzpatrick:

The officers of our company at Cleveland and Youngstown were sales officers. They were maintained from the time the mine at Wildwood was opened until May 15, 1933. That mine does not have access to a river tipple. (179) The nearest point on the river across country is about 14 miles,

[fol. 1462] into Etna. Into Northeastern Ohio Wildwood is located in the Pittsburgh rate group.

By Mr. Gutheim:

Our Wildwood Mine has been operating something less than five years. It started to ship in December, 1928. In those five years our company has been before the Interstate Commerce Commission seeking a reduction in our lake cargo rate to something lower than the Pittsburgh District rate. The outcome of that petition was that the case was dismissed. It was a case under the shortened procedure.

We have lower rates than Pittsburgh to Northwestern Pennsylvania in a good many instances, and our case at the present before the Public Service Commission is simply to adjust the rates that we now have to the basis that they were primarily (180) intended to be on.

Our Wildwood Mine is local to the Baltimore & Ohio Railroad. The Baltimore & Ohio did not oppose that petition before the Public Service Commission of Pennsylvania. Whatever we put up before the Commission at any time, we do not consult the B. & O. on it.

By Mr. Gutheim:

In this proceeding before the Public Service Commission of Pennsylvania our company presented as a witness Mr. C. F. Hosford.

I do not remember that as a witness there Mr. Hosford [fol. 1463] exhibited his losses in Ohio to the high intrastate rates and not at all to the ex-river rates.

By Mr. Martin:

I cannot tell you where any of the competitive coals from mines on the Monongahela or Allegheny Rivers, through what ports they have moved. I do not know, and am unable to answer the question at all.

As to this figure of $1.84 which I gave as the figure through those lower Ohio River ports, I said I was in I. & S. 3619 and that is all that was involved in that case.

Redirect examination.

By Mr. John J. Fitzpatrick:

In answering Mr. Gutheim that the Baltimore & Ohio did not oppose your complaint in the Pennsylvania case. I

did not mean any more than to state the conclusion I drew from the fact that the Baltimore & Ohio did not introduce testimony because we certainly thought the Baltimore & Ohio would oppose it strongly, and I do not know yet that they are not opposing it. (182)

W. H. Welsh was sworn and testified as follows:

Direct examination.

By Mr. Gutheim:

[fol. 1464] My name is W. H. Welsh, Assistant Traffic Manager of the Youngstown Sheet & Tube Company, Youngstown, Ohio. (183)

I have been with the Youngstown Sheet & Tube Company, in the traffic department, for 25 years. Twenty years of that time I have been employed as Assistant Traffic Manager. Prior to that I had 12 years' experience with various railroads, in various capacities in the traffic departments.

The statement that I am about to make is made on behalf of the Youngstown Sheet & Tube Company, the Republic Steel Corporation and the Sharon Steel Hoop Company.

The Buckeye Coal Company, which is a subsidiary of the Youngstown Sheet & Tube Company, owns and operates a mine at Nemacolin, Greene County, Pa., located on the Monongahela Railroad and the Monongahela River. This mine has been in operation since 1918, but the river facilities, tipple, etc., were erected during the year 1932.

Our total investment at Nemacolin is $19,000,000, of which roundly $1,000,000 was expended since this Commission's decision in the Lisbon case in the construction of the river tipple and the cleaning plant built in connection therewith.

This rather large investment of the company is, in a large (184) part, due to the higher value per acre of coal lands [fol. 1465] located along the river, as compared with inland acreage. As a result of this higher valuation, our taxes are about 50 per cent greater than they would be on coal lands of equal quality and quantity of coal, located back from the river.

The coal mined at this particular mine is high volatile special purpose coal, most of which is used in the produc-

tion of metallurgical coke. The capacity of this mine is approximately 2,000,000 tons per year. In 1929 this mine produced and shipped to Youngstown 1,217,000 tons; to Chicago, all-rail, 105,000 tons, and to Chicago, rail-and-lake, 478,000 tons, aggregating 1,800,000 tons.

The Buckeye Coal Company also owns and operates a mine at Brier Hill, Fayette County, Pa., located on the Monongahela Railroad, but not accessible to the Monongahela River. This mine produced and shipped to Youngstown during 1929 514,000 tons of high volatile coal, most of which was used in the production of coke. The tonnage for 1929 was close to the capacity of the mine.

We also have a mine at Dehue, W. Va., on the Chesapeake & Ohio Railway, which has a normal annual capacity of 780,000 tons of high volatile coal. This is usually consigned to our Chicago plant, and the tonnage produced in the years 1929 and 1932 is shown on an exhibit which will be subsequently introduced.

[fol. 1466] (185) Under normal conditions we also purchased a considerable tonnage of coal. I now submit a statement, Exhibit No. F-46, showing all coal consumed at our plants in the Youngstown and Chicago districts for the years 1929 and 1932; that is, not only coal originating at our own mines, but all coal purchased as well.

(Protestant's Exhibit F-46, Witness Welsh, received in evidence.)

The Witness:

The Youngstown Sheet & Tube Company, under normal conditions, operates at its Campbell Works, Youngstown, six batteries, or 306 by-product coke ovens, and at its Brier Hill Works, Youngstown, one battery, or 84 by-product coke ovens. Actual production of coke at these plants for the year 1929 was 1,405,504 tons at Campbell Works and 412,786 tons at Brier Hill Works.

The ex-river rate of 77 cents per net ton, prescribed by the Commission March 27, 1930, as a reasonable rate from Colona and Conway to Youngstown and points grouped therewith, in Docket No. 3282, was published by the Pittsburgh & Lake Erie Railroad July 6th, 1932, from Colona to Youngstown, effective July 16, 1932. On October 29, 1932, the Pennsylvania Railroad published the same rate

from Conway to Youngstown, effective November 30th, 1932.

[fol. 1467] Prior to the completion of river facilities at Nemacolin, the Buckeye Coal Company was negotiating with the Keystone Sand & Supply Company with a view of contracting with that (186) company for the barge transportation of coal from Nemacolin to Colona and Conway. This contract was completed and executed November 13, 1932, covering a period of three years. On this same date —that is, November 13, 1932—shipments via river began. Since that time we have been shipping approximately 5,000 tons of coal per week from Nemacolin via the river and rail route to Youngstown which we anticipate will be materially increased as business improves. The net cost of transporting this coal to Youngstown is a minimum of $1.14, based on barge rate of 25 cents, transfer charge 12 cents, and the ex-river rail rate of 77 cents per net ton, exclusive of the surcharge. Nothing is included in this transportation cost to cover additional cost of loading on barges at Nemacolin, insurance, incestment, amortization, etc.

At this time I wish to offer an exhibit giving detailed information as to the coal shipped via river and rail to our Campbell Works, Youngstown, Ohio, from Nemacolin via river to Colona, thence rail.

(Protestant's Exhibit F-47, Witness Welsh, received in evidence.)

The Witness:

This statement shows date shipped, number of tows, [fol. 1468] number of cars, total weight of coal, (187) average weight per car, and earnings per car and per car mile based on a haul of 38.5 miles, which is the distance from Colona to East Youngstown yard via the P. & L. E. Railroad. It will be noted the earnings per car mile are $1.49, and earnings per car $57.28.

The Pittsburgh & Lake Erie Railroad can and does handle trains during the five winter months of the year with a gross weight of car and contents of 8,000 tons, and during the other seven months of the year with a gross weight of car and contents of 9,000 tons. The Pennsylvania Railroad can undoubtedly do the same thing, since

there is no particular difference in grades, curvature, etc., as per testimony in the Lisbon cases.

Practically all of this ex-river coal is handled in four-door hopper bottom cars, the average tare weight of which is 49,500 pounds. The average weight per car of our coal which has moved thus far is a little over 73 net tons; therefore, the average weight of car and lading is 97.75 tons.

It follows that during the winter months these two railroads could handle 82 loaded cars and during the summer months 92 loaded cars. On this basis, the car earnings for the haul would be $56.21 for a distance of 43 miles. The revenue per train would be $4,609.22 in the winter months and $5,171.32 in the summer months. The revenue per train mail (188) would be $107.19 in the winter months and $120.26 in the summer months. These computations [fol. 1469] are based on rate of 77 cents per net ton, which does not include the surcharge.

I wish to refer to the Commission's decision in I. & S. Docket 3282, reported at 163 I. C. C. 3, and quote the following from page 10:

"Within one mile of Colona is Aliquippa, Pa., at which latter point is located a plant having a maximum iron ore capacity of over 2,000,000 tons per annum and of fluxing stone of about 500,000 tons. The ore moves from the port of Ashtabula, Ohio, and is hauled by the Pittsburgh & Lake Erie from Youngstown to Aliquippa. The fluxing stone moves over the same railroad from the Hillsville-Walford, Pa., district about 10 miles from Youngstown at a rate of 55 cents per gross ton, out of which is absorbed an allowance of 10 cents per ton made to the Aliquippa & Southern by the originating carrier."

Recently the carriers have given consideration to a general readjustment of rates on fluxing stone under C. F. A. Docket Advice 36276, which includes a proposed reduction by them from the Hillsville-Walford District to Aliquippa, Pa., from 55 cents to 42 cents per gross ton, equal to 49.1 cents and 37.5 cents per net ton. We refer to this simply for the purpose of comparison.

This Aliquippa stone actually originates at Shaw Junction, Pa., (189) on a P. & L. E. branch, and is moved thence into the Struthers yard, and from Struthers yard via P. & L. E. main line to Aliquippa, the total haul being 42 miles.

[fol. 1470] Struthers yard is very close to Struthers, Ohio, but the east end of the Youngstown switching limits go right up to the city line of Struthers, Ohio; in fact, they extend over at places. So that the Struthers yard is just a short distance from the Haselton yard of the Pennsylvania or the East Youngstown yard of the P. & L. E. They are practically all in one locality there.

Based on average loading of 60 tons per car, the 42 cent rate for a distance of 42 miles produces carload earnings of 60 cents per mile, as against car mile earnings of $1.49 on our Nemacolin coal, as per our Exhibit No. F-47.

As above stated by the Commission (referring to quotation from L. & S. Docket 3282 decision), an allowance of 10 cents a ton is granted to the industrial switching carrier at Aliquippa, which results in a net revenue to the line haul carrier of 32 cents per gross ton, or 28.6 cents per net (190) ton, producing car mile earnings of 46 cents. It will be noted that the car mile earning on our Nemacolin coal from Colona to Youngstown is more than three times as much as the car mile earnings on the limestone for about the same distance.

That is the same distance over the same railroad in the reverse direction.

The further fact is that the proposed rate of 42 cents is also to apply from Shaw Junction to Midland, Pa., a [fol. 1471] two-line haul of something more than 55 miles, via the P. & L. E., Walford and Pennsylvania Railroad.

My next exhibit, which is F-48, gives detailed information as to coal shipped via barge and rail from Nemacolin via river to Conway, thence rail.

(Protestant's Exhibit F-48, Witness Welsh, received in evidence.)

The Witness:

This statement shows similar data as indicated on the next preceding exhibit for Colona. Based on the distance of 39.9 miles, which is the distance from Conway to Haselton yard via the Pennsylvania Railroad, it will be noted that the average earnings per car mile are $1.41, and earnings per car $56.42.

The entire movement of our ex-river coal thus far has been to our Campbell Works, and in submitting actual dis-

tance and earnings per car mile we want to make it clear (191) that we are not advocating the splitting of the ex-river rate to industries in the Youngstown district. The Commission prescribed the 77-cent rate to the entire district, and unquestionably this rate should be the same to all industries within the switching limits of Youngstown.

In connection with the transportation of this coal from [fol. 1472] Colona and Conway to Youngstown, there would, under normal conditions, be available material for reloading the cars made empty at Youngstown. During the year 1928, for instance, there was sufficient tonnage for the loading of approximately 82,000 open-top cars, either in Youngstown or the Hillsville-Walford stone district, which is located adjacent to Youngstown. During that year approximately 47,000 open-top cars were required by the five quarries in the Hillsville-Walford district for the loading of fluxing stone and crushed stone. Considerable of the fluxing stone was for movement to Aliquippa, just east of Colona on the P. & L. E., and over the same route used in hauling coal from Colona to Youngstown.

At the time there is a considerable tonnage of fluxing stone moving from this same district via the Pennsylvania Railroad to Mingo Junction, Ohio. This movement is through Rochester, which is adjacent to Conway. During 1928 the Standard Slag Company at Youngstown required over 34,000 cars for the outbound loading of slag from its plants in (192) Youngstown, located at the furnaces of the Republic Steel Corporation and the Youngstown Sheet & Tube Company. This would be additional return tonnage via the same route as is the haul northbound from Conway to Youngstown.

"Q. Before you leave the question of the return movement of stone, will you tell us, if you know, Mr. Welsh, [fol. 1473] more about this movement of stone coming down from the Hillsville-Walford district via the Pennsylvania Railroad to Mingo Junction—that is, P. & L. E. and thence Youngstown? What is the home movement?

A. I understand it is sort of a round-about movement. My understanding is that it moves down as far as Beaver Falls; goes to the Beaver Falls Connecting Railroad; is turned over to the Pennsylvania there and is taken over to Conway, and then back to Mingo Junction."

(Narrative resumed.)

But, if these cars could not be utilized in the Youngstown district for return loading, they could be moved to the ports of Cleveland and Ashtabula for the loading of iron ore, because at these two ports the tonnage of ex-lake iron ore handled by the Pennsylvania and the connections of the Pittsburgh & Lake Erie Railroad, namely, the Erie at Cleveland and the New York Central at Ashtabula, under normal conditions, far exceeds the amount of lake cargo coal arriving at those ports for lake shipment. (193)

For instance, the consumption of iron ore by the Jones & Laughlin Steel Company at Aliquippa, which comes through the Port of Ashtabula and is handled by the New York Central and Pittsburgh & Lake Erie, under normal conditions exceeds 2,000,000 tons per year, and Aliquippa, as already stated, is right adjacent to Colona, and the cars, after being made empty of ore, can then be used for the handling of this ex-river coal.

[fol. 1474] All this tends to an economical operation in connection with the handling of ex-river coal from Conway and Colona to Youngstown. I might point out that the old record in I. & S. 3282 contains the testimony of the then General Manager of the P. & L. E. with respect to this balanced operation.

Exhibit F-49 shows distances, rates, ton mile earnings, etc., from Colona and Conway to Ohio points in the Youngstown-Valley district.

(Protestant's Exhibit F-49, Witness Welsh, received in evidence.)

The Witness: The distance from Colona, Pa., to East Youngstown yards is 38.5 miles, and the distance from Conway, Pa., to Haselton yard, is 39.9 miles. All of the coal moving barge and rail from Nemacolin is consigned to our Campbell Works, which plant is adjacent to these yards of the P. & L. E. Railroad and P. R. R., respectively. It should be borne in mind that this plant is reached directly by the P. & L. E. Railroad and the P. R. R. with their own rails, there being (194) no switching charges to absorb. The distances, it will be observed, come within the 30 to 40-mile block; and the full Holmes & Hallowell scale for that block of distance is 94 cents per ton. The present

rate of 77 cents is, therefore, 82 per cent of the Holmes & Hallowell scale.

[fol. 1475] Rates on bituminous coal have been prescribed by this Commission in a number of cases on a very much lower basis than this, and ranging from 66 to 80 per cent of the Holmes & Hallowell scale. For example, in Intrastate Coal Rates to East St. Louis, 142 I. C. C. 95, the Commission prescribed a rate of $1.05 per ton from the Southern Illinois Group to East St. Louis for a distance of 106 miles. This rate is 69 per cent of the Holmes & Hallowell scale and is carried in Galligan's Tariff I-F, I. C. C. 227. The $1.05 rate does not include the surcharge.

In Illinois-Indiana Coal Cases, 128 I. C. C. 265, the Commission prescribed to the Chicago district from the Danville group $1.35 per net ton for a distance or 135 miles; from the Brazil-Clinton group, $1.55 for 185 miles, and from the Linton-Sullivan group, $165 for 231 miles. These rates are, respectively, 77 per cent, 73 per cent and 66 per cent of the Holmes & Hallowell scale and are published in C. & E. I. Tariff 100-B, I. C. C. 263.

There is practically no return loading when cars of coal from Indiana mines are made empty at Chicago. Switching (195) charges absorbed in the Chicago District range from 30 cents to 50 cents per ton. (See pages 272, 286 and 291 of the Opinion.)

Referring again to the exhibit last introduced, No. F-49, [fol. 1476] I wish to point out particularly that the ex-river coal going into this Youngstown-Valley territory goes almost entirely to East Youngstown. I have compiled a weighted average haul of ex-river coal to the entire territory shown on this exhibit by weighting the hauls by the tonnage moving to each destination shown, during the period from the commencement of the ex-river movement to May 31, 1933. The result is a weighted average haul of 42 miles, whereas the actual distances to all destinations shown range from 34.9 to 57 miles.

Up to the present time ex-river coal tonnage from Colona and Conway to destinations in the Mahoning and Shenango Valleys has moved only to plants within the Youngstown switching district and to Warren, Ohio, the distances ranging from 38.5 miles to 57 miles.

In this proceeding the carriers are obviously seeking an advance in the rate covering the movement of bituminous coal ex-river from Colona and Conway to Youngstown and the points grouped therewith. As previously stated, the Buckeye Coal Company has a large investment at Nemacolin, and has entered into a three-year contract for towing this coal to Colona and Conway; the river distance being 97.54 miles to Conway and (196) 100.04 miles to Colona. [fol. 1477] That is the same contract which I previously mentioned as covering a term of three years and naming a charge of 25 cents per ton for the barge movement.

This river haul from Nemacolin to Colona and Conway is substantial, and should not be compared with the haul across the river from mines in the Panhandle of West Virginia to points in Ohio on the Wheeling & Lake Erie Railroad's River Division, which extends along the Ohio River from Steubenville to a point opposite Wheeling, and to Mingo Junction on the P. R. R., and to Bridgeport on the B. & O. Railroad. For these hauls across the river, transportation plus barge to rail transfer charge, as indicated by the Commission in its decision of May 2, 1933, in Docket No. 25566, is 18 cents per ton. This embraces a barge charge for a very short river haul, plus a transfer charge. There there is a substantial haul on the river, as from Nemacolin to Colona or Conway, the differences between the all-rail and the rail-and-water rates to final destination, are not too great.

It will, of course, be impossible to use the rivers for the transportation of coal unless the river and rail rate is substantially less than the all-rail rate, and it seems to us that the comparatively small tonnage of coal originating (197) at points along the Ohio River in the West Virginia Panhandle should not jeopardize the maximum reasonable ex-river rates on coal prescribed by this Commission in I. & S. Docket 3282.

[fol. 1478] As outlined, the net cost of transporting our Nemacolin coal to Youngstown via barge and rail is $1.14 per net ton, which is just 80 per cent of the all-rail rate of $1.42. The river haul constitutes about 70 percent of the entire distance, and there is no waste of transportation; the through distance being almost exactly the same as via all-rail.

That $1.14 rate I have just named is the same $1.14 that I named earlier as the minimum cost.

I wish now to go into the competitive situation. It must be recognized that these ex-river rates are an outgrowth of the action of this Commission in the Pittsburgh, Lisbon & Western construction cases, the two decisions being reported at 150 I. C. C. 43 and 150 I. C. C. 619.

The Youngstown consumers supported the Lisbon in its attempt to secure a certificate to construct a new line of railroad connecting Youngstown with the Ohio River at Smith's Ferry, Pa. The Youngstown interests then indicated to the Commission how the shift from beehive to by-product coking of coal and the consequent movement of coal instead of coke to the blast furnaces, and the ability of the furnaces along the (198) rivers to utilize the rivers for their coal transportation, had upset the competitive relationship between the river furnaces and their interior competitors, including those at Youngstown.

It was in the face of all that evidence that the Commis- [fol. 1479] sion in its first report, reached the conclusion that it was practicable and desirable that the Youngstown district should have access to the Ohio River by rail line or lines which will afford them substantially the transportation advantages, including rates, proposed by the applicant, the Lisbon. That was a rate somewhere within the range of 50 to 75 cents per ton, which would cover the cost of any deliveries of coal to connecting carriers at Youngstown and leave for the Lisbon an average revenue of 60 cents per ton.

In that connection I desire to submit another exhibit, No. F-50, consisting of three sheets, which compares the actual cost of transportation of coal from river mines to consuming plants of our competitors in the Pittsburgh district proper, and at Aliquippa, Weirton, Steubenville and Wheeling, which competing plants are able to get their coal by river haul and do not have to utilize the railroads at all.

(Protestant's Exhibit F-50, Witness Welsh, received in evidence.)

It will be observed from this exhibit that the saving per ton of coal in transportation alone, by the ability of these competitors to move their coal on the rivers, (199) is much

greater than the savings which are possible to the Youngstown Sheet & Tube Company by the utilization of the river and rail routes from Nemacolin via Colona or Conway to Youngstown, paying the present transfer charge of 12 cents from barge to rail, and the present ex-river rail rate [fol. 1480] of 77 cents. If this rate of 77 cents is increased, it will handicap us in our competition with our river competitors, for thereby we would be further handicapped in our competition with our river competitors, and we would, to the extent of such an increase, be deprived of our access to the Ohio River and of the transportation advantages, including rates, which the Lisbon Railroad proposed, and to which the Commission has said we were entitled.

From the standpoint of cost of service, we do not have to go any further than the findings of the Commission in its two reports in the Lisbon construction proceeding and its report in I. & S. 3282. I merely wish to say at this time that the Lisbon proposed a rate within the range of 50 to 75 cents a ton. This rate was to be such as, minus necessary switching absorptions, would net an average revenue of 60 cents per ton, to be applicable over a line of railroad the operating conditions on which would have been less favorable than are the operating conditions on the Pittsburgh & Lake Erie or the Pennsylvania from Colona or Conway to Youngstown.

(200) In the operation of the river to rail transfer facilities at Colona and Conway the P. & L. E. and the Pennsylvania have the advantage of the concentrated assembly of [fol. 1481] large tonnages of coal, permitting its movement from those points to Youngstown in trains of maximum tonnage, due to the fact that, if a solid train of Youngstown coal is not available, there is plenty of other freight available in the immediate vicinity to fill out the tonnage. There is no wide-spread distribution of empties and reassembling of loads necessary. The entire origin service is concentrated and economical. It would not be going too far to say that the conditions at Conway and Colona, so far as assembling costs are concerned, are ideal.

Of course, the terminal service at destination would be the same as on the all-rail coal.

The report of the Commission in the first Lisbon case, pages 44 and 45, sets out in detail the competitive situation under which the Youngstown district has labored in the

iron and steel industry for many years past. Except as we have recently had some slight relief in the river-and-rail coal movement, the situation is the same today. Briefly, during the ten years following the war, changes in the adjustment of rates on the raw materials entering into iron and steel manufacture at Youngstown and, apparently to a still greater extent, changes in the methods of the manufacture of coke,—a commodity (201) largely used in the manufacture of steel—have impaired the ability of the Youngstown manufacturers to market their production in [fol. 1482] competition with their rivals. The general effect of these changing conditions was that, whereas, in 1913, the transportation costs of assembling material for the manufacture of one ton of pig iron at Youngstown amounted to $2.37, and at Pittsburgh, $2.63, the comparative figures in 1918 had become, Youngstown $3.28 and Pittsburgh $2.49, and in 1928 had become, Youngstown $4.44 and Pittsburgh $3.11.

"Q. (By Mr. Gutheim: Mr. Welsh, will you stop there a moment and say whether it is possible for you to convert this saving in the transportation cost of your coal from Nemacolin to Youngstown by the use of the river into the decrease in the assembling cost of raw materials at Youngstown, comparatively with what you have just stated?

A. Yes, sir; I can do that. We use 2600 pounds of the Nemacolin coal to make a ton of coke. Of course, about 400 pounds of low volatile coal is also used."

(Narrative resumed.)

In addition to that, we also use some other coal in the mixture, but of this coal we use 2600 pounds. That is 1.3 tons. The saving, as I have outlined, is 28 cents. That is, (202) the net through rate via barge and rail is $1.14. That deducted from $1.42, the all-rail rate, leaves a difference of 28 cents.

That is the maximum possible saving. Out of that we [fol. 1483] have to have this amortization of new investment, interest, and so forth, but I was not quite through.

That is the saving on one ton—28 cents—but, since we use 1.3 tons of Nemacolin coal to a ton of coke, the saving would be 36 cents for each ton of coke; and it requires about a ton of coke to product a ton of pig iron. That has refer-

ence only to the actual use of the coal in the manufacture of coke that goes into the blast furnaces.

In addition to that, we use a lot of other coal in the operation of the plant, and on much of which we have no reduction at all.

As compared with that 36-cent saving, I can point out, from Exhibit F-50, what the saving is to our competitors (203) on their river movement.

As per our Exhibit No. F-50, sheet No. 3, the saving to our competitors in the Pittsburgh and Wheeling districts on the rivers ranges from 53 cents to $1.02 per ton.

I am not familiar with the methods of producing coke; but some of the coke-producers use all high velatile coal, and such producers as do would really save, for each ton of pig iron produced, 50 per cent more than these figures show. In other words, their saving would be pretty close to $1.00 as against our 36 cents, that is our saving.

[fol. 1484] So far as the ex-river rate from Colona and Conway to Youngstown is concerned, we do not believe this rate has caused any discrimination against any producers in western Pennsylvania or West Virginia producing districts. Our Nemacolin coal moved all-rail to our own plants before the ex-river rates were established from Colona and Conway. In the case of Youngstown, the rail lines from Colona and Conway are receiving revenue, so far as our Nemacolin coal is concerned, based on a rate of 77 cents per net ton for a haul of less than 40 miles. The all-rail rate from the Connellsville district to Youngstown is $1.42 per ton, while (204) the distance is approximately 140 miles. In other words, for a haul of 40 miles, which is less than one-third that via all-rail haul of 140 miles, these carriers under the present ex-river rates receive 77 cents, or more than half the revenue they would on shipments moving all-rail from Nemacolin. The relief we have secured on tonnage via barge and rail is small; not, in our opinion, as much as we are entitled to in view of the difference in service, considering our large investment, etc.

(205) For almost a decade we have been trying to secure some relief in our transportation costs on coal, especially high volatile coking coal from the Connellsville district, in the hope that our assembling costs could be reduced to some [fol. 1485] extent, and thereby make it possible for us to compete with Pittsburgh, Wheeling and the other districts

which enjoy water rates. A little help was finally secured in the latter part of 1932, when the carriers published the prescribed maximum reasonable rate of 77 cents per net ton, exclusive of the surcharge, from Colona and Conway to Youngstown. This reasonable maximum rate was prescribed by the Commission after extensive hearings on the subject. The relief secured (206) does not by any means put us on an equitable basis as compared with our competitors having water transportation. We still have our backs to the wall, even under the present ex-river rates. Youngstown has never regained the second place in the industry from which she was ousted by Chicago.

As was testified in the Lisbon case, no new basic capacity has been constructed in the Youngstown district since 1918. As was there pointed out, this was due primarily to the unfavorable rate situation on the assembling of raw materials. It is obvious that, if this condition continues, the Youngstown district will dry up and its great steel business will be lost to those districts having lower assembling costs, by reason of water transportation or otherwise. This development would be a calamity to the rail carriers, as well as to the thousands of share-holders in Youngstown industries. These share-holders are distributed throughout the United States.

As long as this district survives as an active and aggressive competitor, the railroads will enjoy the bulk of its in- [fol. 1486] bound and outbound traffic, including heavy bulk commodities and finished and semi-finished products. If, however, freight rates which leave the Youngstown district steel mills in a non-competitive position, gradually dry up the district, then all the business formerly handled by the rail carriers in the district will be diverted to those districts enjoying lower assembling costs by water, and such business (207) will be lost forever to the railroads.

As we see the situation, it is as vital to the railroads as to ourselves that our competitive position be maintained permanently. For this reason, among others, we think the 77-cent rate is unreasonably high and should be reduced. Speaking for our company, the matter is extremely important, and we feel that the rate should be lowered, if further traffic is not to be diverted from the rails.

The carriers should keep in mind that all of our tonnage, inbound and outbound, must be handled by the rail car-

riers, and that it requires about six tons of inbound raw materials for each ton of outbound finished products. As previously stated, Youngstown is the only large iron and steel producing district that does not have water transportation. We feel that we should have had, and should have the carriers' cooperation in this matter, especially when it is to their own interest to do something constructive to keep the Youngstown district on the map as an iron and steel producing center, rather than to continue their [fol. 1487] activities tending to tear down and destroy what has been accomplished there by the steel industry.

Our plants in the Youngstown district are only about 40 miles from the Ohio River. The Commission has found that there is no good reason why we are not entitled to barge and rail transportation, and we think this is especially so in (208) view of the car mile earnings for the rail haul and transportation conditions more favorable than in any other sections of the United States, and which we think are deserving to be called ideal.

Since the carriers presented their testimony in the Lisbon cases—and by carriers I mean these carriers which have succeeded in having these ex-river cases reopened—they have broken faith with the receivers of coal in the Youngstown district and with the Commission itself.

In the Lisbon cases we advocated a rate of 50 cents per net ton, and we are now more convinced than ever that 50 cents per net ton is a reasonable rate covering this movement, especially in view of the rate of 42 cents per gross ton which is proposed by the carriers on limestone from the Hillsville-Walford district to Aliquippa.

It will be noted that the 50-cent rate which we are proposing is equal to a rate of 56 cents per gross ton, and this rate is 33-1/3 per cent higher than the 42-cent rate pro- [fol. 1488] posed by the carriers from the Hillsville-Walford district to Aliquippa.

(209) The present rate in effect on stone from the Hillsville-Walford district to Pittsburgh and McKeesport is 90 cents a gross ton. It is proposed by the carriers to reduce that rate to 75 cents per gross ton. Out of the rate in many cases there is an absorption of 16 cents per gross ton to the Union Railroad or the Monongahela Connecting Railroad.

That rate—that proposed rate—carries the stone to the mills south of Pittsburgh, as is the case with McKeesport.

That involves hauls of 25 to 30 miles farther than to Aliquippa.

On this question of the saving to our company, by virtue of the ex-river rate and the rail and river transportation, in the production of pig iron, that is merely the saving on pig iron alone, and has no reference to the cost under which we are still handicapped in finishing steel.

We get gas coal, steam coal and other coal besides Nemacolin coal.

This contract under which river coal is being barged at 25 cents a ton has no specified minimum tonnage provision in it.

It simply covers all our coal from Nemacolin mines.

(210) I heard the testimony here in which Witness Kern [fol. 1489] proposed a rate of $1.01 from Conway and Colona to Youngstown.

It could not move, for the reason that the net cost—the $1.01 rate plus 12-cent transfer plus the 25-cent river haul—would be [illegible]. It costs us two or three cents a ton more to load at Nemacolin. Then we have insurance, investment, amortization, etc., which would run our cost, river and rail, to a little in excess of the all-rail cost. Therefore, of course, we could not move any ex-river coal.

(211) And, having killed off the Nemacolin mines, they would then kill off the river.

Cross-examination.

By Mr. Orcutt:

I said that we had a total investment of $19,000,000 at Nemacolin.

I did not mention any rate of interest. I simply said that, in view of the investment, insurance, additional cost of loading, etc., the $1.01 rate would run the cost up to a little in excess of the all-rail rate.

As to what interest we have to pay that we would not have to pay if it moved all-rail, I cannot say that there would be any interest that would change the situation any, except that I did explain that our taxes are about 50 per [fol. 1490] cent more and the acreage about 50 per cent. It should be worth something to be on the river.

(212) There is nothing about the river movement that has increased our taxes, but we are on the river, and, as I

have stated, the Commission has said that we were entitled to river transportation.

I said just a few moments ago that these additional charges which we had would so increase the cost that, even though our water and rail rate into Youngstown were 4 cents less than the all-rail rate, these additional items would run our cost up beyond the all-rail rate.

"Q. Now, what are those charges that you would not have on an all-rail movement?

A. Well, for example, there are some things that I did not mention, such as——

Q. (Interposing.) But you mentioned interest.

A. I know.

Q. Now, do you still insist that interest would be one of them?

A. I mentioned investment. I admit that that would not change, whether we shipped all-rail or river and rail.

Q. And your taxes would not change?

[fol. 1491] A. We had a reason for locating on the river and purchasing (213) land at large cost."

(Narrative resumed.)

In 1918 we began the operation of this Nemacolin Mine. That was some few months before this Lisbon case about which you have talked, but we had in mind that there would be an advantage in being on the river. We anticipated that some day we might be able to use the river.

We did not have in mind then the 77-cent rate. I will say this: We also had in mind that we would be able to use the river in the Lisbon cases. In fact, the P. R. R. testified that they could do anything that Lisbon did, and then some.

When I was comparing our river-rail transportation cost with our all-rail cost, I said that there were some items that would raise the river-rail transportation cost. Those items which will raise our river-rail transportation cost, in addition to our water movement, our transfer and our rail movement, that would not obtain if the movement were all-rail, are as stated: We have to ship this coal via river and rail in accordance with our contract. Naturally, we want to supply ourselves for the entire twelve months of the year. There may be times when we cannot use (214) the river, in which case we will have to stock coal, unload it

on the ground, and pick it up later. That is very expensive, and, depending on how much stocking we have to do and how much coal we have to pick up, it may make it very [fol. 1492] much in excess of the all-rail rate.

I did not say that we cannot use river transportation in the winter-time, and that makes it necessary for us to ship all our coal during the summer and stock it. There have been times and may be times in future winters when there will be a week or two when we cannot get coal because of freeze or flood. We cannot do without coking coal, not even for a day—much less a week. We naturally have to keep a supply of coal on hand, and it is very expensive to unload coal and then pick it up and take it to the point of consumption.

I cannot think of anything else that raises the rail and river cost. But haven't I shown that it would be more?

"Q. I don't think you have. That is what I am trying to find out. You have named one thing that would increase the cost. What else is there?

A: Well, let's add the figures together again. $1.01 and 37 cents is $1.38. I said it would cost us two or three cents more to load on barges. That would be $1.40 or $1.41. Surely the fact that we would have to stock coal on the (215) ground and pick it up and take it to the point of consumption would make it more than a cent a ton in excess."

(Narrative resumed.)

I said we had made an investment in the cleaning plant [fol. 1493] at Nemacolin. I do not know that I have the exact date when we put up that cleaning plant. I gave the expense of the cleaning plant and the tipple. I just have general information on it. I am not sure exactly when the cleaning plant was built.

That cleaning plant was built in anticipation of a river movement of coal as well as a rail movement.

As a matter of fact, it was built not long before there was any movement from Nemacolin to Conway by water. We had been trying to accomplish something for about ten years. If you have the date it was built, I will abide by it. I haven't the date; but I am positive that we were considering that barge transportation before it was built, because we had had it in mind for about ten years.

I am sorry, but I am not sure if it was built before or

after the hearing in the Lisbon case. If you know when it (216) was built, I will be glad to know.

As to whether it was built during the time that we were receiving coal via all-rail, we have only received coal via barge and rail since last November. I can answer your question absolutely. It was longer ago than that. And it was utilized in cleaning coal that moved all-rail. It was quite some time before we moved any coal by water.

[fol. 1494] We are not advocating the use of the Holmes & Hallowell scale for making the rates in our territory.

As to the rates to East St. Louis and to the Chicago district, I just referred to the percentages they were of the Holmes & Hallowell scale, as an expedient in making the comparison. I said that our rate from Colona and Conway to the East Youngstown yard and the Haselton yard, 77 cents, was 82 per cent of the Holmes & Hallowell scale, based on the mileage which the Commission used in their decision. (217) We are not advocating that basis. Those rates were not based on the Holmes & Hallowell scale. I just used it is an expedient comparison.

I have mentioned the only rates, the lowest and the highest paid for towing any coal that we receive at Youngstown, from Nemacolin or elsewhere. Of course, we feel that we have a low rate. That is one reason why we contracted for three years.

We don't get any coal from any other mine than Nemacolin by river that I know of. If I found that we got quite a little, I would be surprised.

This contract for towing was made just a short time before the rate became effective from Colona—probably several months—and that has three years to run.

I am sorry, but I do not know what sort of cancellation [fol. 1495] clause we have in that contract. I am not familiar with the contract (218) to that extent. I know that it is a three-year contract. I know we were glad to make it. We made it at a time when prices were at the bottom, and we felt that we had made a good contract.

I am just trying to think if I know it is a three-year contract. I know I did not have an opportunity to read it. I saw it. I will have to say, though, in regard to the terms of the contract, that I received my information from our officials, our executives. I did not read the contract.

I do not advocate the making of freight rates on the so-

called assembly cost theory. I realize that you cannot do that. We are located in Youngstown, where there is no river. Of course, that is not the railroads' fault. At the time industries began to produce their own by-product coke, instead of using beehive coke, the carriers lost a tremendous tonnage in the Pittsburgh and Wheeling districts, but they could do nothing about it. They hadn't any chance of meeting those low costs. In our case the carriers do not lose revenue by any means. It is still about the most attractive revenue traffic you have. It is very hard to find anything you have that is better. You do not lose on it.

(219) I spoke of competitors in the Steubenville district, [fol. 1496] having an advantage of 53 cents to $1.02 over us.

We assume that industries in the Pittsburgh district can get rates about the same as ours. I think I mentioned Steubenville.

(Consulting statement:) The Wheeling district is not shown on the statement where I said they had an advantage of 53 cents to $1.02 over us.

I made the statement that in some one of those districts our competitors had an advantage of 53 cents to $1.02 a ton over us. That was with reference to industries in the Pittsburgh district on the Monongahela River and including Midland, Pa.

There are industries on the river. (220.) They have always been on the river. That is a geographical advantage they have, and they are entitled to it. We are maintaining that it is to your interest to make it possible for us to live. Even though we are an inland point, we are close to the river.

Q. Do you know that large quantities of limestone are moving down the Allegheny River to the Pittsburgh district by barge?

A. That is possible. I know very little about it. I have heard that there is some movement; yes, sir.

Q. Don't you know that the limestone rate to which you referred is a water-compelled rate?

A. That may have something to do with it.

Mr. Orcutt: That is all.

By Mr. John J. Fitzpatrick:

Q. As I understood it, you distinguished as between the service that you perform in your yard on ex-river coal in

[fol. 1497] contrast with coal that moves all-rail. Is that true?

A. The service performed in our yard?

Q. Yes; that is, that the ex-river coal, because of stocking, required extra handling.

A. There are times in the year, especially in the fall of the year, when we want to make sure of having a supply in the winter-time, or in the spring, when we have a flood, as (221) we did last year, we would probably want a pretty good supply on hand; and I mentioned that it was very expensive to lay it down and then pick it up and take it to the point of consumption.

(Narrative resumed.)

There is a difference between ex-river coal, in reference to that point, in contrast to the coal which moves in the 90-car trains which were spoken of this morning, moving all-rail.

The all-rail service is regular and more dependable. We can depend on getting our coal each day when it moves all-rail, even in periods of high water and even if the river is frozen up.

It is true that our ex-river coal moves into the same bins and in the same quantities that our all-rail formerly moved, when it can move currently and regularly, of course. The movement is not as satisfactory. What I mean is that it does not move in currently just exactly the same. For instance, in the month of June we received 25,000 tons ad-[fol. 1498] ditional in regard to our regular movement of 5,000 tons a week, or one tow each week. That would put us to some expense, either in stocking or in the matter of demurrage. It does not come in quite as regularly and currently as though we had it coming in all-rail.

(222) My Exhibit F-46 shows that during 1932 no steam coal was received barge and rail. No steam coal has been received barge and rail during 1933.

All our Nemacolin coal up to May 31st, at least, was used in making coke—all of it.

The Nemacolin coal moves exclusively to Youngstown. That has been the case at least since the rates were published from Colona and Conway.

This barge charge of 25 cents per ton applies whether we move one additional barge during 1933 or whether we

move 500 barges. That is the rate. It is to cover all our Nemacolin coal.

I am certain that there is no rebate to our company if the amount of tonnage should exceed a certain minimum, because I am sure that in talking the matter over with our executives they would have pointed that out. We have made very sure that 25 cents is the rate. We realized the need of something that we could depend on in this record to show what the real cost was on the river. So we have, as usual, confined ourselves to the actual facts.

[fol. 1499] I did not examine the contract to determine whether under it our company is free to apportion the tonnage as between (223) all-rail and barge-rail movement, but that is not the case, because we had it quite clear as to the terms of the contract, although I will confess, as I did to Mr. Orcutt, that I did not read it. That rate of 25 cents is fixed, and our coal must all move by river from Nemacolin.

That is my understanding of the contract.

I spoke of the tonnage that might be available in the Youngstown district for the loading of open-top equipment. In that particular, there is not any difference as to the open-top equipment that moves ex-river coal into Youngstown in comparison to the equipment that moved the all-rail coal. It moves in steel hoppers, just the same.

(Hearing adjourned at 4:15 p. m. until 10:00 a. m., Wednesday.)

[fol. 1500] (224) (Hearing resumed at 10:00 a. m. Wednesday, June 28, 1933.)

(225) J. E. Monroe was sworn and testified as follows:

Direct examination.

By Mr. Orcutt:

My name is J. E. Monroe.

I am a statistician, Bureau of Railway Economics, Washington, D. C.

I have been requested by the carriers petitioners here to prepare a statement of the property value and operating

income account of Class I roads in the Eastern District, exclusive of the Pocahontas Region. I have prepared such a statement. (Producing same.)

(Mr. Orcutt: We offer that as Exhibit F-51.)

(Respondent's Exhibit F-51, Witness Monroe, received in evidence.)

I have likewise been requested to prepare and have prepared, a statement of the surplus or deficit after fixed charges of the Class I Steam Railways, Eastern District, exclusive of the Pocahontas Lines. (Producing same.)

(Mr. Orcutt: We offer that as Exhibit F-52.)

[fol. 1501] (Respondent's Exhibit F-52, Witness Monroe, received in evidence.)

(226) My Exhibit No. F-51 shows, for the years 1921 to 1932, eclusive, the property investment of the carriers of Class I in the Eastern District, the findings of value made by the Interstate Commerce Commission in its decision in Ex Parte 74, plus net additions and betterments to the end of each year, and the principal items of revenues and expenses, down to net railway operating income.

Total operating revenues, line 9, totaled $2,820,000,000 in 1929. Beginning with 1930, revenues declined at the average rate of nearly $470,000,000 per year. Total operating revenues in 1932 were less than in 1929 by $1,403,000,000, or 49.8 per cent.

Total operating expenses, line 15, stood at $2,058,000,000 in 1929, and in 1932 totaled $1,077,000,000, a decline of $981,000,000, or 47.7 per cent.

Railway tax accruals, line 24, amounted to $163,000,000 in 1929 and $117,000,000 in 1932.

Although aggregate tax payments have declined since 1929, the relative burden of taxes has been greater. The ratio of taxes to total operating revenues was 5.81 per cent in 1929 and was 8.25 per cent in 1932. The ratio of taxes to net operating revenue was 34.35 per cent in 1932.

[fol. 1502] Net railway operating income, line 29, amounted to (227) $236,000,000 in 1921, reached a peak for the period of $535,000,000 in 1929, but declined substantially in each year subsequent to 1929.

The total for 1932 was only $160,000,000.

The rate of return on investment, line 30, averaged 2.70 per cent in 1921 and was 5.05 per cent in 1929. It declined to 3.27 per cent in 1930, to 1.89 per cent in 1931 and to 1.46 per cent in 1932.

The rate of return, based on the Ex Parte 74 findings of value, line 31, stood at 5.33 per cent in 1929 and at 1.53 per cent in 1932.

Since this statement was prepared, similar statistics have become available for the first four months of 1933. Total operating revenues for the first four months of 1933 declined 21.3 per cent under the first four months of 1932. Total operating expenses were reduced 21.5 per cent, and net railway operating income declined from $52,226,000 in the first four months of 1932 to $33,640,000 in the first four months of 1933, a decline of 35.6 per cent.

My next exhibit, No. F-52, shows the surplus or deficit after fixed charges, years 1929 to 1932, for the individual Class I Railways of the Eastern District.

[fol. 1503] Carriers reporting net deficits after fixed charges in 1929 operated only 1.58 per cent of the total mileage of the Class I carriers in the Eastern District. This percentage (228) increased to 6.40 per cent in 1930, to 28.16 per cent in 1931, and further increased to 68.98 per cent in 1932. The Class I carriers of the Eastern District that operated at a loss in 1932 reported an aggregate deficit of $73,475,000.

It will be noted that out of a total of 48 companies only four companies reported net deficits in 1929, but the deficit carriers numbered 33 in 1932.

The net deficit after fixed charges for the Class I carriers of the Eastern District as a whole is shown as $48,145,000 in 1932.

According to the latest reports now on file with the Interstate Commerce Commission, the net deficits for the first three months, Class I roads of the Eastern District, increased from $10,339,000 in 1932 to $29,705,000 in 1933.

I might state that the information shown by these exhibits was taken from reports filed by the carriers with the Interstate Commerce Commission. I might further state that on my Exhibit F-52 the roads are grouped according to certain systems. For example, the New York Central system includes the Cincinnati Northern, the Big Four

Lines, Evansville, Indianapolis & Terre Haute, Michigan Central, Pittsburgh & Lake Erie and the Ulster & Dela-
[fol. 1504] ware.

(229) Cross-examination.

By Mr. Gutheim:

It is fair to deduce from my Exhibit F-51 that the difference between the eight billion three hundred million dollars, roundly, of investment in 1921 and the ten billion seven hundred million, roundly, of investment in 1932 represents the additions and betterments, less retirements, in those intervening years.

"Mr. Gutheim: Mr. Examiner, in a number of the large tonnage cases in which we have been engaged in recent years, where the carriers have submitted these statements, they have asked the privilege of keeping the information up-to-date to the time of final submission of the case; and I am requesting that, to whatever extent later figures are available than those for the four months of 1932 mentioned by Mr. Monroe when the case is submitted, they be made a part of the record at that time."

(230) "Examiner Trezise: Then, it is understood that Exhibit F-52 will be brought up-to-date at the time of the oral argument?

"Mr. Orcutt: Yes. We will do that by supplemental statement or otherwise.

"Mr. Gutheim: Mr. Orcutt, we feel that that should be [fol. 1505] shown, of course, for 1933 as compared with 1932——

"The Witness (interposing): The cumulative period will be satisfactory?

"Mr. Gutheim: No; the months and the cumulative period should be shown.

"Mr. Orcutt: We have shown no months in Exhibit F-52 to compare with it.

"Mr. Gutheim: No; but you have shown the trend, and we do not get the trend in Exhibit F-52 unless you show the months.

(231) "Examiner Trezise: You do not ask for it by months for the other years?

"Mr. Gutheim: No. I only ask for 1932 by months.

"Mr. Orcutt: We do not agree to furnish that.

"Mr. Gutheim: Well, I am requesting it. The Examiner can rule on it.

"Mr. Orcutt: I do not see any purpose of showing 1932 by months, unless you have March or April or corresponding months for the preceding year; and we have not offered that.

"Examiner Trezise: Mr. Orcutt does not want to show it, so we will let it go at that.

"Mr. Martin: Then, Mr. Examiner, we request the privilege of being permitted to show that at the final hearing. We can secure the information, and would like to submit it when the case is submitted on oral argument.

"Examiner Trezise: You may have that privilege, Mr. Martin."

[fol. 1506] (232) W. ROBERTS CAMERON was sworn and testified as follows:

Direct testimony:

The Witness: I am appearing in the interest of the Westmoreland Coal Company. I have been connected with sales of the Westmoreland Coal Company's coal since 1917; from 1917 to 1921 as Sales Engineer; 1921 to 1929 as Sales Agent; 1929 to date, Assistant General Sales Manager, General Coal Company, which is exclusive sales agent for the Westmoreland Coal Company's coal.

The Westmoreland Coal Company is a Pennsylvania corporation, with headquarters at Philadelphia. It is a producer of gas coal at the mines named below, located in Westmoreland County, Pennsylvania, on the lines of the Pennsylvania Railroad, in the so-called Pittsburgh origin rate district. I will name the mines: Adams Mine, Irwin, Pa., Biddle Mine, Irwin, Pa., Denmark Mine, Claridge, Pa., Export Mine, Export, Pa., Hutchinson Mine, Yukon Pa., [fol. 1507] Magee Mine, Yukon, Pa., (233) Marchand Mine, Lowber, Pa., McCullough Mine, Claridge, Pa., Riley Mine, Hillton, Pa.

The Westmoreland Coal Company owns slightly in excess of 10,000 acres of unmined Pittsburgh seam coal tributary to its mines, containing approximately 100,000,000 tons of high volatile, low sulphur gas coal, which is used in

gas plants, by-product ovens, in locomotive steaming and various industrial processes.

This coal is the same kind of coal which is now moving down the Ohio River for trans-shipment at Ohio River points.

In 1913 the Westmoreland Coal Company mined and shipped 5,000,000 tons of coal; but since that time transportation difficulties and reduced freight rates from competing fields have seriously reduced this tonnage. So that in the decade of 1921 to 1930, inclusive, the average annual production was 2,778,000 tons. Our 1930 tonnage was 2,520,000 tons, of which 1,170,000 tons went east, 850,000 tons west, and 250,000 tons into the State of Ohio.

In 1932 we produced and sold 1,396,000 tons, of which 1,240,000 went east, 156,000 west, and 24,600 tons into the State of Ohio.

The 5,000,000-ton figure I gave was for 1913.

(234) Those last figures were for 1932. I did not give the split-up for 1931. I did not have that.

[fol. 1508] All of the mines of the Westmoreland Coal Company are located inland from the canalized tributaries of the Ohio River, and this Company cannot take advantage of the ex-river rates now in effect. All of the mines having river tipples along the canalized tributaries of the Ohio River now enjoy all-rail rates the same as the Westmoreland Coal Company, though the distance from the Westmoreland Coal Company's mines to eastern destinations is substantially less.

In the past the Westmoreland Coal Company had rates east 15 cents less than the mines along the Monongahela River and 15 cents less than the mines located in the Pittsburgh District to the west of the Irwin Basin, in which the mines of the Westmoreland Coal Company are located.

The rates from all these mines have been decreased 15 cents, putting them on a parity as far as eastward movement is concerned. For the 16 years I have been connected with the Westmoreland Coal Company I know of no changes in differentials to competing fields which have favored the Westmoreland Coal Company.

The rates now in effect ex-Ohio River greatly increase the difficulty of moving the Westmoreland Coal Company's coal into Ohio. Based on a boat rate furnished by a witness in (235) this case of 25 cents, mines on the river in our rate

district will enjoy a 20-cent advantage in shipping to [fol. 1509] Youngstown, Canton or Cleveland by way of Colona or Conway, and in the case of the Connellsville District mines the 6-cent advantage which we now enjoy to these three cities, all-rail, will be changed to a 20-cent disadvantage.

Changes of 10 cents in differential will move large tonnages from one origination group to another, and at the 20 or 26-cent difference will eventually stop all movement from the district discriminated against.

In the negotiation of large pieces of business in Ohio we find ourselves faced with this new situation, making it almost impossible for us to successfully compete in this large coal-consuming area. My company is a member of the Western Pennsylvania Coal Traffic Bureau.

"By Mr. Orcutt:

"Q. I understand that the Western Pennsylvania Coal Traffic Bureau are here opposing any advance whatever in the ex-river (236) coal rates. Does that attitude coincide with your position here? As I understand, you are not opposed to advancing the ex-river coal rates.

"A. Our position is purely with regard to differentials, Mr. Orcutt—that is, relationships. We naturally would not take any position against a reduction in rates on coal generally.

"Examiner Trezise: Relationship between what?

"The Witness: Between different fields or different routes.

[fol. 1510] "Examiner Trezise: And not between ex-river and all-rail?

"The Witness: Oh, yes, sir.

"Examiner Trezise: Then, it was the differential also that you referred to?

"The Witness: Yes, sir. We would have no objection to the all-rail rate coming down to meet the ex-river rate, naturally."

(Narrative resumed.)

I am Assistant General Sales Manager of the General Coal Company; and in that position I come in constant contact with quotations and current prices of coal of various grades and classes.

(237) Well, it would be hard to say that the price of bituminous coal has stiffened any within the past two weeks. Certainly within the last month, it has stiffened. That is a pretty difficult question to answer—to what extent. On various sizes of coal, I should say 15 to 20 cents a ton.

As to whether that is an increase in the price which is actually moving the coal, or is merely an increase which the producers are trying to get, or are trying to get a larger increase than that, we are trying to get as much as we can, to enable us to get our properties back so that they won't take such a large loss.

I should think it is true that within the last two weeks or [fol. 1511] a month bituminous coal has been sold at prices 15 to 20 cents over the prices during the preceding month.

Cross-examination.

By Mr. Gutheim:

(238) I cannot speak for the industry generally. I do not know what the other fellow is getting at all.

I think that the Westmoreland Coal Company may have gotten 15 or 20 cents a ton more.

The General Coal Company is the sales agent for large tonnages of coal other than that of the Westmoreland Coal Company.

I could not give you all the other coals we might sell within a year. Some for which we are general sales agents regularly are to begin with, the Westmoreland Coal Company; the Stonega Coke & Coal Company; the Crozier-Pocahontas Coal Company, or I had better say the Stonega Group. The Stonega coal is the southwest Virginia gas coal. The Crozier-Pocahontas coal is Pocahontas coal.

(239) They are generally sold in this territory west of Pittsburgh.

I do not know what rates the carriers are here proposing shall be charged for the transportation of ex-river coal in lieu of those that are now in effect. I am speaking of the rates in effect at the moment. I am just stating our general position in this case. I am not an expert on rates.

[fol. 1512] "Q. If it should develop that the rate which the carriers are here proposing, for instance, from Conway and Colona to Youngstown is the same rate that the Westmoreland Coal Company as a member of the Western

Pennsylvania Coal Traffic Bureau instructed that Bureau to oppose, would that make any difference in your position here?

"A. I did not get that.

"Examiner Trezise (addressing Mr. Gutheim): Did you get an answer?

"Mr. Gutheim: I did not get an answer at all.

"Examiner Trezise: Do you know what you have to answer, Mr. Cameron?

"The Witness: No, sir. If I could find out what Mr. Gutheim has in mind, perhaps I could answer. We are members of the Western Pennsylvania Coal Traffic Bureau, and there is evidently some confusion here.

(241) "Q. by Mr. Gutheim: Is it a fact, Mr. Cameron, that under whatever instructions you came here on this occasion, nothing was said to you about individual rates which the carriers are now proposing?

"A. I do not know the details of this very well. I came down here rather hurriedly, Mr. Gutheim. I know the effects of this 77-cent rate on the Westmoreland Coal Com-[fol. 1513] pany. That is what I am opposing."

(Narrative resumed.)

I do not handle the rate situation, as a rule, for our company—not to a great extent.

I said something about having an advantage in distance eastbound as compared with the river mines, but that I had no advantage in rates. That is the fact.

I do not know it to be a fact that westbound the river mines have a distance advantage over us and pay the same rate.

In my figures for 1930 I said 1,170,000 tons went east; 850,000 tons west and 250,000 to the State of Ohio. That last figure is (242) a correct statement of what I said concerning the tonnage shipments. I mis-read the total for the three figures. It should be 1,670,000 tons eastward.

I do not have my westbound tonnage of 850,000 broken down.

As to how far west our market extends, about Cleveland would be our limit.

The State of Ohio tonnage is included in the westbound.

(243) "Q. Then, do you add the 850,000 and the 250,000 together, or is the smaller included in the larger?

"A. Yes; the smaller is included in the larger. Ohio [fol. 1514] is westbound."

(Narrative resumed.)

The other 600,000 westbound went to Western Pennsylvania and Buffalo—the lines at Buffalo. That is the tonnage which went to lines westward of our mines. Our mines are east of Conway.

Our rate is $2.24 to Buffalo and $1.84 to Cleveland, all-rail.

We at one time did move a substantial tonnage to Buffalo on the $2.24 rate. There are no substantial tonnages in that tonnage there (indicating).

I gave a figure of 250,000 tons for Ohio as a whole for 1930. I cannot give the tonnage to Cleveland alone, or to Lorain, or to Canton, or to Massillon.

(244) I cannot tell you what the tonnage for the State of Ohio was for 1931, or for 1929.

Coming to our 1932 tonnage, that little 24,600 tons was divided pretty well over the State of Ohio. Not much of that would go west of Cleveland. We do not get west of Cleveland.

"Q. Do you know of any competitive ex-river coal which has displaced your coal, which has moved to Cleveland, Lorain, Canton or Massillon through the Ohio River ports below Colona or Conway—what are ordinarily referred to as the lower Ohio River ports?

[fol. 1515] "A. I would not know that in detail; no, sir. I do not know where all our competitors' coal moves.

"Q. You know of none that has moved through the Wheeling & Lake Erie ports, for example; do you?

"A. No, sir; I do not have definite knowledge of all the coal which may move that way."

By Mr. Baker:

(245) "Q. You have lost no sales to the Youngstown Sheet & Tube Company; have you?

A. Do you mean have we lost some business which we may have had?

Q. Which you might have got in selling coal to the Youngstown Sheet & Tube Company.

A. I hope not.

Q. Have you lost any sales which you had prior to the effective date of the ex-river rates to Corrigan and McKinney?

A. I could not say.

Q. Can you tell us what tonnage you have lost by reason of the effectiveness of these ex-river rates?

A. I know that within a short time I have quoted on business for Corrigan and McKinney and did not get it.

[fol. 1516] Q. You cannot tell us what business you have lost for reasons attributable to these rates?

A. Not generally. The purchasing agents usually do not outline why they have lost a piece of business. We can form our own theory as to how they have lost it, but they do not take us into their confidence 100 per cent."

By Mr. Martin:

"Q. Can you take your figure of 24,600 tons shipped to the State of Ohio for the year 1932 and divide that between the period prior to the effective date of the (246) ex-river rates and subsequent to that date?

"A. No, sir."

(Narrative resumed.)

The figure which I have given for the year 1932 for shipments to the State of Ohio approximates our average monthly figure for the year 1930.

I do not know how much moved in the first six months of 1932 and how much in the last six months. Those were small orders, well scattered, and it would be hard to say.

As to whether there must have been a substantial shrinkage in the first six months of 1932, I would not know about that without looking it up.

[fol. 1517] RALPH E. JAMISON was called as a witness, and, having been duly sworn, testified as follows:

Direct testimony:

I represent the Jamison Coal & Coke Company, of Greensburg, Pa., and the South Union Coal Company, of Greensburg, Pa.

The Jamison Coal & Coke Company has three mines in

Westmoreland County, Pennsylvania, located on the Pennsylvania Railroad, and two mines in Marion County, West Virginia, located on the Baltimore & Ohio Railroad.

The South Union Coal Company has one mine in Fayette County, Pennsylvania, on the Pennsylvania Railroad.

The combined production of these properties is in excess of 2,000,000 tons per annum. They have a reserve capacity of about 125,000,000 tons.

We object to these ex-river rates as at present standing in these proceedings, for the reason that we have no access to the river and no possible way of ever getting any dumping point. We, therefore, are subjected to competition from our competitors located on the river, which, in effect, completely shuts us out of the markets to which these rates apply. (248)

Our interest in this proceeding is one with reference to the relationship of rates as between ex-river and all-rail. Our position is that from the standpoint of our interest there should be relative equality in level as between ex-river and all-rail rates.

[fol. 1518] Our company is a member of the Western Pennsylvania Coal Traffic Bureau.

Cross-examination.

By Mr. Gutheim:

I understood before I took the witness stand, that the carriers were here proposing a rate of $1.01 applicable to ex-river coal from Conway and Colona to Youngstown. You advised me to that effect.

I do not remember anything of the instructions that were given to the Secretary of the Western Pennsylvania Coal Traffic Bureau with reference to this proceeding; (249) I was not present at the meeting.

By Mr. Martin:

I testified at the original hearing in I. & S. Docket 3619; that hearing concerned only the proposed ex-river rates via the Wheeling & Lake Erie System from its River Division points to Cleveland, Lorain, Canton and Massillon.

I do not know of any coal which I have lost to competitors which has ever moved under those rates from Wheeling & Lake Erie River Division points to these destinations.

Our Westmoreland mines are in the Greensburg rate (250) adjustment. They take rates 15 cents under the Westmoreland district in that adjustment.

I did not at any time ever have any understanding or intimation that that Bureau was going to oppose the placing of the ex-river rates and the all-rail rates on the same general level, although I suppose I was advised about it. [fol. 1519] I have been away from the office a good while, and I do not recall. I, no doubt, was advised of it by mail.

By Mr. Guthelm:

I am a member of the Western Pennsylvania Coal Traffic Bureau Traffic Committee. It is a fact that there have been a number of meetings of that Committee which I have not attended. (251)

J. F. DONAHOE was called as a witness and, having been duly sworn, testified as follows:

Direct testimony:

My name is J. F. Donahoe, Secretary-Treasurer, Carnegie Coal Corporation, Pittsburgh.

At the previous hearing in this case I appeared on behalf of our company, Carnegie Coal Corporation, testifying then that we were the owners of over 8,000 acres of coal land, containing approximately 56,000,000 tons of coal, on which property there were located six mines with an annual capacity of 2,200,000 tons; that all of these mines were inland mines, not accessible to river transportation; that none of the coal land owned by the Carnegie Coal Corporation was available for river transportation; that the location of the mines was on the Pennsylvania Railroad, one having a connection with the Montour Railroad, all lying west of Pittsburgh on what is known as the Panhandle Division; that the natural markets for that coal are north and west of Pittsburgh.

I then stated that, if the proposed ex-river rates over Mingo Junction were published, we would be barred from [fol. 1520] the destination territory thereunder.

At the time these rates were published, we were shipping eleven industrial accounts in the Cleveland territory. Four months after the publication of the ex-Ohio River rates

over (252) Mingo Junction, we shipped our last car of coal into Cleveland.

Relative to the Conway-Colona rates, I stated that, if they were published, we would object. We enjoyed a substantial industrial business in the Youngstown territory. In April of this year we lost our last contract. We are now shipping no industrial coal to either Cleveland or Youngstown.

We do not believe that when the rates were ordered published the Commission was aware of the results that would happen to the inland mines; and I am here on behalf of our Corporation to ask that an adjustment be made in those rates to reestablish the inland mines on an equality with the river mines, so that we can again go into our natural markets and try to regain the business we have lost.

By Mr. Orcutt:

It is our position that the ex-river rates and the all-rail rates should be established upon the same relative level. We are members of the Western Pennsylvania Coal Traffic Bureau. (253) I do not concur in the position here taken by their counsel that the attempt to place the ex-river and the all-rail coal rates on the same relative level should be opposed. I believe the all-rail rates and the river rates should be on the same relative basis.

Cross-examination.

By Mr. Martin:

I was a witness in the original hearing of I. & S. 3619. [fol. 1521] I know, of course, that the rates there in issue were (254) only the Wheeling & Lake Erie's rates from its River Division points to Cleveland, Lorain, Canton and Massillon.

I did not testify this morning that from the date those rates went into effect we did not ship a single car of coal into Cleveland. I said that four months after they went into effect we shipped our last car of coal to Cleveland.

As to whether I know of any competitive coal which we have lost to the river, which has ever moved to Cleveland under those rates, all I know is that our consumers informed us that the total delivered cost of our coal was out of line with that of what they were buying.

I cannot cite an instance of a single shipment of competitive coal which we have lost to the Wheeling & Lake Erie's ex-river routes to northeastern Ohio.

Our company ships substantial amounts of lake cargo coal that is for trans-shipment by water to points on the Great Lakes.

We ship substantial amounts of ex-lake coal (255) from docks at the head-of-the-lakes into the interior Northwest,—that is coal which has had a previous water-haul on the Great Lakes.

Mr. Gutheim:

I have never represented our company in any of the meetings of the Western Pennsylvania Coal Traffic Bureau. I am Secretary-Treasurer of the Company.

One mine has a connection with the Montour Railroad. We have shipped coal out over the Montour Railroad within the last thirty days.

[fol. 1522] We have been shipping coal over the Montour since the (256) opening of that particular mine. If I recall the date correctly, it was about 1918 that that mine was opened. I would not say that during the last two years our shipments over the Montour have dwindled to practically nothing; they have fallen off very materially.

By Mr. Orcutt:

When I lose a contract with some consumer in the Cleveland territory I ordinarily have no means of knowing who gets that contract in our stead. So that, in that event, I would not know whether the coal moved down the Allegheny or Monongahela River to Conway or down the Allegheny or Monongahela and Ohio River to Mingo Junction and thence to Cleveland, or not.

By Mr. Martin:

I know that the Pennsylvania and P. & L. E. Railroad have put in the same ex-river rates to Cleveland (257) from Colona and Conway that the Wheeling maintains from its River Division points. I also know that Colona and Conway are 45 to 50 miles further up the river,—that is, nearer the mines in the Pittsburgh District,—than are the River Division points of the Wheeling, and that to go to the

Wheeling Division points requires an additional river haul, loaded, of that 40 or 50 miles on any tonnage originating above or at Colona.

J. V. McMahon was called as a witness, and, having been duly sworn, testified as follows:

Direct examination. (258)

[fol. 1523] By Mr. Gutheim:

My name is J. V. McMahon, Traffic Manager, Youngstown Chamber of Commerce, Youngstown, Ohio. I have been connected with that organization for the past 17 years, and have been Traffic Manager for the last three years. Prior to my connection with that organization I had four years' railroad experience in the traffic departments of the Erie Railroad and the New York Central Railroad.

The Youngstown Chamber of Commerce is a corporation, organized under the laws of the State of Ohio, not for profit, composed of members and business interests located in Youngstown and adjacent cities, in what is commonly called the "Youngstown District" and often referred to as the Mahoning and Shenango Valleys.

Youngstown is the largest city in the District, having a population of 170,000, while the population of the entire District, as quoted in the United States Census figures of 1930, is shown as 488,826.

There are a number of fair-sized manufacturing cities in the District adjacent to Youngstown, having plants producing various kinds of commodities, such as leather, rubber, metal office furniture, steel buildings, etc. However, the iron and steel industry is the most important activity in the District. In the past Youngstown has been one of the (259) most important tonnage producing points reached by the trunk line roads entering the District. For more than thirty years the Youngstown District was the second largest steel producing district in the United States, being sur- [fol. 1524] passed only by the Pittsburgh District, but within the last decade it has fallen to third place. There is a capital investment in the steel industry in this District of approximately five hundred million dollars.

A few years ago there were 44 blast furnaces located in

the Youngstown District. Today there are 32 blast furnaces, 13 of which are now in blast, which is the highest percentage of operation for the past two years.

The Youngstown District since the early twenties finds itself with keener competition each year, on account of the fact that its competitors either on the Great Lakes or the rivers are favored with water transportation, which advantage permits them to maintain lower costs of production and lower delivered costs on their finished steel, which an inland point such as Youngstown must offset by an absorption, if it is to secure any portion of the tonnage.

As stated above, the Youngstown District was the second largest steel producing district in the United States, but it has now fallen to third place. Its changed position is due entirely to transportation; the increased cost of railroad transportation to the Youngstown District and the reduced (260) cost of cheaper rail and lake transportation to its competitors. The Youngstown District is but 35 or 40 miles from the river, and should be entitled to the benefits incident to the river's improvement, towards the cost of which it was a large contributor.

Instances can be cited where industries have removed their plants or erected new plants outside of the Youngs- [fol. 1525] town District where they could obtain lower production costs. The Newton Steel Company, a manufacturer of sheet steel, abandoned their plant in the Youngstown District and erected a new plant at Monroe, Mich., a point located on Lake Erie, which enables them to secure raw materials by water instead of rail. The A. M. Byers Company formerly operated a furnace and mills in the Youngstown District, and they have since removed this plant to a point on the Ohio River. The Davidson Coke & Iron Company own a blast furnace in the Youngstown District, but do not operate this furnace on account of lower production costs at their furnace located on the Ohio River.

Other instances can be cited where industries in our District have removed or erected steel producing units in other districts which are more favorably located and where production costs are less.

The Youngstown Chamber of Commerce supported the application of the Pittsburgh, Lisbon & Western Railroad Company for a certificate of public convenience and necessity for the (261) construction of a branch line to Youngstown. This certificate was denied, and this Commission in

that proceeding ordered the established rail lines to provide ex-river rates on coal to the Youngstown District so our industries could take advantage of river and rail transportation. This Commission prescribed a rate of 77 cents per ton from the Ohio River to Youngstown as a reasonable maximum rail rate, and our industries have recently enjoyed this rate to some extent.

[fol. 1526] The Youngstown District, being wholly dependent upon the rail lines for the movement of their inbound raw material and their outbound finished products, have always worked very closely with the rail lines and, on the other hand, on account of the large tonnages involved, the rail lines have been dependent on our steel manufacturers for their business, and we have tried to impress upon these lines the importance of establishing rates on raw materials which will enable us to prosper and, in turn, provide the rail lines with large tonnages, which will be lost to them if our industries are compelled to seek other points of production with water transportation, and allow the Youngstown District to gradually dry up.

Every person in the Youngstown District is vitally interested in the success of the steel industries. This ex-river rate on coal prescribed by this Commission offsets only a small portion of the disadvantages we are confronted with. (262)

[fol. 1527] At the same time, it is one place where we are able to save a small amount, which is reflected in our production costs, and we are very much opposed to any increase in this ex-river rate to Youngstown.

In the original proceedings of this case we took the position that a reasonable rate for the transportation of coal from Colona and Conway, Pa., to Youngstown would be 50 cents per ton, taking into consideration the short haul, the highly favorable operating conditions, the ruling grade of three-tenths of 1 per cent, heavy trainload movements and direct delivery to steel plants at destination.

We are still of the opinion that a rate of 50 cents per ton should be established to cover this particular movement.

Cross-examination.

By Mr. Orcutt:

Youngstown not being situated on either the river or the lake, our competitors have certain advantages over us by

way of transportation. Those advantages are geographical to some extent.

We insist that the carriers should be required to equalize, at least partially, those geographic disadvantages. (263)

A. S. Boden was called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Gutheim:

[fol. 1528] My name is A. S. Boden. I am Secretary-Traffic Manager of the Western Pennsylvania Coal Traffic Bureau at Pittsburgh, Pa.

For about 19½ years I was in railroad and industrial traffic work in Western Trunk Line territory, prior to taking up my position in Pittsburgh.

I appear for the Western Pennsylvania Coal Traffic Bureau only in I. & S. Docket 3282. That is the limit of my instructions. (264)

The position of the Bureau was that they were in opposition to any injection of rates in this territory for the rail hauls that were based on the Holmes and Hallowell scale; that was the position taken when the rates were originally filed in I. & S. 3282.

There was further action of our Bureau when the carriers filed the first petition for reconsideration of the Commission's action in that proceeding, the action being that we should oppose the petition to reopen the ex-river rate case.

When the subsequent petitions of the carriers were filed, there was no individual meeting on that score, except the first meeting and action to oppose any petition to reopen the case.

I have made examination of these rates as they now are from Conway and Colona to Youngstown, and as they are proposed by the carriers, to determine what the relation would be to the Holmes and Hallowell scale.

Q. Will you say what you have to say on that point?

A. The effect of the proposal of the carriers would be to

[fol. 1528½] (265) put the basis of rates to Youngstown at practically 100 per cent of the Holmes & Hallowell scale. If we consider the haul to the Youngstown Sheet & Tube Company works, which haul is under 40 miles, the present rate of 77 cents would be about 82 per cent of the Holmes & Hallowell scale. If we consider the haul for the group as a whole, which is about 43 miles, the present 77-cent rate is about 75 per cent of the Holmes & Hallowell scale.

I would say that the volume of movement was very small on the Holmes & Hallowell scale in these ranges of distance, 30 to 50 miles in the Holmes & Hallowell territory.

The Holmes & Hallowell scale of rates does not produce 100 per cent of the scale revenue for the carriers; it produces something less than 85 per cent. That is due to the fact that the scale of rates applies via the shortest multiple route—not over three lines—while the actual service performed is generally single-line. I have an exhibit which compares the rate situation in this Central Territory with the rate situation in the Holmes & Hallowell territory, with respect to transportation of other than bituminous coal. (266)

(Protestants' Exhibit F-53, Witness Boden, received in evidence.)

This statement indicates the difference in the rate levels on the 1st, 4th, 5th and 6th classes, as well as on iron and steel, as between Central Freight Association territory and Zone 2 rates in Western Trunk Line territory.

[fol. 1529] The territory in which most of the haul is performed under the Holmes & Hallowell scale of rates is in what is termed Zone 2 in the decision in 17000, Part 2, Western Trunk Line Class Rates.

Under the columns headed "1st Class" there is shown what the 1st class rate is in Central Freight Association territory, which, as noted, is 36 cents for hauls of 25 miles. In Zone 2, Western Trunk Line territory, the rate is 43 cents.

The next column indicates that the 1st class rate in C. F. A. territory for the 25-mile rate block is 84 per cent of that in Western Trunk Line Zone 2 territory. The same explanation will suffice to read for the other classes, as well as for each distance block shown on the lefthand side of the page.

Under the columns headed "6th Class", I want to make

this explanation: There is no 6th class rate in Western Trunk Line territory. The 6th class basis in C. F. A. territory is 27½ per cent of 1st class, and I have, therefore, used (267) 27½ per cent of 1st class in Western Trunk Line territory as comparative.

At the bottom of the figures there is shown a line "Average Per Cent", with figures of 77, 69, etc. These are the average percents C. F. A. of Western Trunk Line. In other words, the 1st class rates in C. F. A. territory for the distance blocks shown hereon are 77 per cent of those in Western Trunk Line Zone 2 territory; 4th class is 69 per cent, etc.

[fol. 1530] Under the last column, headed "% C. F. A. of Zone 2", there is shown what the average percent of the five classes is. To illustrate, for the 25-mile block the C. F. A. 1st, 4th, 5th and 6th classes and iron and steel rates average 78 per cent of those in Western Trunk Line Zone 2 territory. At 50 miles it is 75 per cent, and so forth.

The figure 72 at the bottom of the last column indicates that on all of the comparisons shown by this exhibit the C. F. A. rates average 72 per cent of those applying in Zone 2, Western Trunk Line territory.

I have made an inspection of the Colona transfer operation. The tipple of the P. & L. E. at Colona is about a half to three-quarters of a mile off of the main line of the (268) P. & L. S. running from Pittsburgh to Youngstown. The haul in moving empties is more or less on a down-grade until within a short distance of the loading chute. There the tracks are inclined slightly, to a base sufficient to allow the cars when made empty to be shuttled down the hill by gravity. There are two tracks running into the loading boom. Two cars may be loaded at the same time. These cars are held in position by a cable, used as a retarder. As the cars are loaded, the retarding brakes are removed, and the cars are allowed to descend further on the grade. Immediately on being completed loaded, each car is automatically on the scales at the boom. The cars are then weighed and further continue by gravity down to other tracks, to allow a later movement by switch or road engine back to the main line. This is done on the third rail, which is on a lower level than the loading rail.

[fol. 1531] These engines can haul about 8 to 10 loaded cars to the main line. The main line, as well as the side

track, of the P. & L. E. at Colona is adjacent to the Aliquippa Works of the Jones & Laughlin Steel Company. They are there ready to be placed in trains for movement northbound.

I have an exhibit which shows the trend of price realization on bituminous coal at mines in the United States and in the State of Pennsylvania from 1917 on (producing statement). (269)

(Protestants' Exhibit F-54, Witness Boden, received in evidence.)

I have in mind the exhibits of short-haul coal rates in Western Pennsylvania introduced here on behalf of the carriers by Witness Kern. I think that is Exhibit F-22.

I am asked if I know anything concerning the extent to which bituminous coal in Western Pennsylvania has in recent years been diverted from rail to highway.

I would say, from my information gained in the past five years, or approximately so, that of a total consumption of domestic and some other steam purpose coal in the Pittsburgh District of about a million and a quarter tons, that due to the situation of higher rates prevailing within the district approximately 800,000 tons of that has gone to trucks.

My understanding is that for the coming season there have been a number of contracts made, based on the truck rate, because of the inability to move the coal under present high rates within the Pittsburgh District.

I know there have been figures published by the Commonwealth of Pennsylvania which indicate the total amount of bituminous coal trucked in the five counties of the western Pennsylvania industrial area. (270)

The figures of the Department of Mines of the Commonwealth of Pennsylvania show that for the year 1932 approximately two and a quarter million tons of coal were moved [fol. 1532] by truck.

That is for the State as a whole, but for the counties of Allegheny, Washington, Westmoreland, Butler and Beaver there moved about 1,636,000 tons. Those five counties are in the western part of Pennsylvania.

Surrounding the City of Pittsburgh, and in the County of Allegheny, which is the county in which Pittsburgh is located, there was a truck movement of 1,048,000 tons. (271)

I understand that the retailers have had the matter up

with the carriers for some downward revision, but the carriers have denied the request.

In the action of our Bureau under which I was instructed to oppose the rates proposed in I. & S. 3282, and to oppose the carriers' petitions for reconsideration, there were some dissenting votes. I do not know what the vote was. There were some votes other than a unanimous vote.

Cross-examination.

By Mr. Orcutt:

I could not say when that vote was taken on the original action. I was not connected with the Bureau at the time the original action was taken. The subsequent action was taken at the time or within a few days after the first petition was filed for reconsideration of these ex-river rates. (272)

Our position here is not merely to oppose the injection of the Holmes & Hallowell scale as a rate-making yardstick into this territory. We are opposed to any increase in rail rates, because we feel that the present rate structure on all-rail rates is too high.

The connection with the Holmes & Hallowell scale is that the basis proposed here, as well as that proposed in the original hearing, would put them on the Holmes & Hallowell scale, and it is our contention that that scale is entirely too [fol. 1533] high for application in this territory, which moves millions of tons of coal.

It is our position, then, that the all-rail rates are too high.

As to having no objection whatever to the all-rail and the ex-river rates being upon the same relative level, if that level is satisfactory to us, we have taken no position as to any ex-river rates, except to the extent that the rate for the rail haul is above what we would consider a reasonable rate. (273)

As to the rate for any haul by rail which we consider too high, of course, we will oppose that.

Our Bureau has not taken any action as to whether the all-rail rates and the ex-river rates should be upon the same relative level. As to whether the ex-river rates should be upon a level depressed below the all-rail rates because they have had a previous water haul, I do not agree that the 77-cent rate for that is a depressed rate at all.

We are opposed to any sort of a rail rate that is higher than what we consider a reasonable rail rate. You may call it depressed; but I would not so term it.

I have referred to a movement by truck into Pittsburgh. As to whether the rail rate into Pittsburgh or the river rate into Pittsburgh is the base for the truck rates on coal, I do not have that knowledge.

By Mr. Day:

(274) I am asked to turn to my Exhibit F-53, where I show scale rate distances there up to 160 miles. That approximately reflects the distance from Duluth and Superior to the Twin Cities; it would take in that block.

It is not my understanding that hauls between the Twin Cities and Duluth and Superior would be in Zone 2 of Western Trunk Line territory. I said in my direct testimony that most of the hauls within the Holmes and Hallowell territory were within Zone 2. That haul of which you speak is within Zone 1. Hauls up to 160 miles from the head-of-the-lakes would not be within Zone 1; they would not—depending on where you were going.

I said that the movement from the Twin Cities and the head-of-the-lakes would be in Zone 1. You do not have to go [fol. 1534] over 160 miles to get in Zone 2. You can go 15 miles and get into Zone 2. (275) You would have to go west and southwest of Duluth to do that.

I would not say the Twin Cities are generally in a westerly direction from the head-of-the-lakes. I would say they were almost south.

The Zone 1 rates, in any case are about 10 per cent lower than the Zone 2 rates, I think.

It has been the contention of the carriers that the Holmes and Hallowell scale was made, and so stated in the Commission's decisions, to reflect, for distances up to 150 or 160 miles, the hauls to the Twin Cities, but I have never agreed to that.

The Commission mentioned something to that effect in the report, but did not definitely so find in any finding that I recall. The authority for the iron and steel Western Trunk Line Zone 2 rates shown in our exhibit is Docket 17000, Part 2, or 32½ per cent of 1st class.

You have some specific iron and steel rates for those

distances, but it is not generally the scale under 32½ per cent, as I understand (276) it.

There are iron and steel producing points at the head-of-the-lakes on Lake Superior at Duluth, Superior and those points. They are rather important producing points.

Q. Do you know what the actual iron and steel rates would be for hauls up to 160 miles?

A. In what direction?

Q. Take it to the Twin Cities, if you please. Take it for 160 miles out of Duluth in any direction.

A. You have some specific iron and steel rates out of the Duluth-Superior territory that are less than 32½ per cent of 1st class.

[fol. 1535] (Narrative resumed.)

It is a fact that they are, in some instances, considerably less than the Docket 17000, Part 2 rates, in Eastern territory, but that is not the general level, and that is not the level the carriers contend is proper. If you took the iron and steel rate from Duluth to Minneapolis, for example, I would say that it would probably run about a little less than the C. F. A. scale for the same distance.

I am asked if I know of any carload commodities actually moving in Western Trunk Line territory on 1st class or fourth class. (277) On 4th class there are thousands of carload commodities. On 1st class there would be very few, if any. You have a lot of canned goods and other miscellaneous jobbing commodities which move on 4th class. I did not say that all canned goods moved under 4th class in Western Trunk Line territory.

Q. As a matter of fact, you could not name a single canned goods rate applicable in Western Trunk Line territory, could you, on a basis as high as 4th class?

A. I did not put this in (indicating) to indicate the movement of any commodity. It indicates that these particular class rates, 1st, 4th, 5th and 6th, are less in C. F. A. territory than they are in Western Trunk Line. There is nothing in here (indicating exhibit) to show whether or not they move traffic.

(Narrative resumed.)

I have been familiar with the traffic moving from West-

ern Trunk Line territory for about 18 or 19 years. Grain is an important commodity in Western territory. (278) Dairy products move on 3rd class; that is an important commodity moving in Western Trunk Line territory—and lumber and lumber products, and paper and paper boards.

As to whether it isn't a fact that the commodity rates generally applying on those commodities in Western Trunk Line territory are lower than the rates actually charged on those commodities for hauls of like distance in Eastern ter- [fol. 1536] ritory, they should be. They move the volume of the tonnage to the same extent that your coal rates move most of the tonnage. The Interstate Commerce Commission may have so indicated in a number of decisions that the level of class rates is no indication of the difference in transportation conditions in the several territories, but I do not think there is any question in the Commission's mind or in the minds of the railroads that the level of rates in C. F. A. territory is lower and should be lower than in Western Trunk Line territory. That is as to (279) any commodity.

The distances we are dealing with here are generally under 50 miles to Youngstown.

I am asked if I can state any instance where rates out of the Holmes and Hallowell shipping points at the head-of-the-lakes, for distances under 50 miles, are lower for the distances actually traversed than the scale would make because of multiple line hauls. I did not say for that distance. I said for the Holmes and Hallowell territory.

By Mr. John M. Fitzpatrick:

The rates shown on Exhibit F-53 are mileage scale rates. I am asked if I have advocated mileage scale rates for application on coal. You are getting into a pretty broad subject now. There is a difference of opinion as to that, and I do not understand that there is any injection of a mileage scale in this particular issue.

Having in mind the particular structure that we are considering here, the only statement I can make here is that authorized, which is in opposition to any basis of rates, as I stated (280) before, that are 100 per cent of the Holmes and Hallowell territory scale. Personally, I think that mileage is a big factor in the establishment of any rate.

As to whether the rates from Mingo Junction and the

other ports in that territory to Cleveland should be higher than from Conway and Colona, I haven't any position to [fol. 1537] state as to the rates from Mingo Junction to Cleveland. My appearance here is solely as to I. & S. 3282.

As to the figure I gave (281) with reference to coal that is being trucked in Pennsylvania, all those figures include coal moving from any mine, I think, that has ten or more employes, and without reference to whether or not the particular mine is served by rail or not, as I understand it.

By Mr. Orcutt:

I do not recall offhand what the rate on bituminous coal from the Leetonia Group to Youngstown is. I take no position on the question of relationship as between ex-river and all-rail rates. Our position in reference to the Colona-Conway rates, as I think I stated it, is that we consider the proposal as too high a basis of rates for the rail haul factors.

(282) Mr. Martin: Before I call our witness, I would like to state our position for the record, very briefly.

The position of the Wheeling & Lake Erie Railway Company and the Lorain & West Virginia Railway Company in I. & S. Docket No. 3619 is as follows: That the existing ex-river rates from their river ports to Canton and Massillon of $1.02 per net ton and to Cleveland, Lorain and South Lorain of $1.27 per net ton are maximum reasonable ex-river rates.

They renew the suggestion which they made at the first hearing in I. & S. Docket No. 3619 that the ex-river rates from these ports should be restricted to coal originating at mines on the Monongahela and Allegheny Rivers, provided [fol. 1538] the ex-river rates from the Baltimore & Ohio, Pennsylvania and Pittsburgh & Lake Erie Railroad ports, Bridgeport to Colona and Conway, inclusive, are likewise restricted.

In the original hearing in I. & S. Docket No. 3619 the respondents introduced elaborate evidence to prove that the proposed ex-river rates of 95 cents per ton to Canton and (283) Massillon and $1.10 per net ton to Cleveland and Lorain were not less than minimum reasonable rates. The Commission required these rates to be canceled and approved in their stead rates of $1.02 and $1.27 per ton.

These respondents are of the opinion that the testimony and exhibits introduced in the original hearing amply supports their claim that these higher rates are maximum reasonable rates, and will rely upon that evidence and a few additional exhibits and a limited amount of testimony in explanation of them, to be introduced in this proceeding. I will call Mr. Adell.

Mr. Orcutt: I would like to ask you, Mr. Martin—you need not answer if you do not want to—if you take any position at all in I. & S. 3282.

Mr. Martin: No, Mr. Orcutt. We were not in I. & S. Docket No. 3282 in the original hearing, and we take no position as to it in this hearing.

H. J. Adell was called as a witness, and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Martin:

My name is H. J. Adell. I am Chief Clerk, General Traffic Department, Wheeling & Lake Erie Railway Company, Wheeling, W. Va. I was the traffic witness for the [fol. 1539] respondents in the first hearing in I. & S. Docket 3619. (284).

I have prepared a series of exhibits for introduction at this further hearing. My first exhibit, which will be Exhibit F-55, is a statement of one sheet, showing the average loading in net tons per car of ex-river coal loaded at points on the River Division of the Wheeling & Lake Erie for the period from July 16, 1932, to May 31st, 1933, inclusive. Rates on ex-river coal became effective from these origin points on July 16, 1932. The period covered by this exhibit is the same as covered by Mr. Kern's Exhibit No. F-31, relating to the tonnage of ex-river coal moving from these points.

(Respondents' Exhibit F-55, Witness Adell, received in evidence.)

[fol. 1540] This exhibit shows that the average loading of this ex-river coal is exceptionally heavy. For instance,

from Mingo Junction to Cleveland, the average loading is 61.03 tons per car, and to Lorain 65.5 tons per car, while the average for Mingo Junction and Martins Ferry to all destinations is 62.6 tons per car. This may be compared with the average loading of all coal transported by the Wheeling & Lake Erie during the years 1929 and 1930 of 56.6 tons per car. In other words, the average loading of ex-river roal originating at the Wheeling's River Division (285) ports is 110.6 per cent of the average loading of all coal handled by the Wheeling during the years 1929 and 1930.

My next exhibit, No. F-56, is a statement showing the rates and earnings on ex-river bituminous coal, carloads, from Wheeling River Division station to Cleveland, Canton, Lorain, South Lorain and Massillon, Ohio.

(Respondents' Exhibit F-56, Witness Adel, received in evidence.)

This statement shows that under the existing ex-river rates of $1.27 to Cleveland and Lorain and $1.02 to Canton and Massillon the earnings per ton mile are 8.64 mills to Cleveland, 8.52 mills to Lorain and South Lorain, 11.72 mills to Canton and 12.75 mills to Massillon. The information shown upon this exhibit should *should* be substituted for similar information shown with respect to the proposed rates of $1.10 and 95 cents on our Exhibits Nos. 67 to 76, inclusive, introduced at the original hearing. This substitution will afford a comparison between the existing ex-river rates which we claim to be maximum reasonable rates and the rates on coal, ex-lake iron ore, furnace fluxing stone, crushed stone, sand and gravel, shown on those exhibits.

My next exhibit, No. F-57, is similar to the last exhibit, except that it also shows the earnings per car mile and per car on the existing rates of $1.27 and $1.02. The material shown on this exhibit should be substituted for similar information shown on Exhibit No. 77 as to the proposed rates (286) of $1.10 and 95 cents.

[fol. 1541] (Respondents' Exhibit F-57, Witness Adell, received in evidence.)

My next exhibit, No. F-58, is similar to the preceding exhibit, except that it does not show earnings per ton mile.

The material on this exhibit should be substituted for similar information as to the proposed rates of 95 cents and $1.10 on Exhibit No. 78, which is a comparison with rates on light loading commodities.

(Respondents' Exhibit F-58, Witness Adell, received in evidence.)

I now desire to introduce my next exhibit, No. F-59, which is a statement showing the rates and earnings on ex-river bituminous coal, carloads, from the Wheeling River Division stations to Canton, Cleveland, Lorain, South Lorain and Massillon, compared with rates and earnings on lake cargo coal from certain coal districts in Ohio and Pennsylvania to Lake Erie ports, and on ex-lake bituminous coal from Chicago, Ill., to Rockford, Ill.

(Respondents' Exhibit F-59, Witness Adell, received in evidence.)

I have selected these rates on lake cargo coal and ex-lake coal for the reason that they are in the nature of proportional rates, and some of them have been held to be maximum reasonable rates by the Commission. For example, a rate of $1.43 was found to be the maximum reasonable rate for the transportation of lake cargo coal from the Ohio No. 8 and Cambridge districts to Lake Erie ports in the (287) case of Lake Cargo Coal Rates 1925, 126 I. C. C. 309, and the carriers were required by the order in that proceeding to reduce their pre-existing rate of $1.63 by 20 cents per ton. In the same proceeding the carriers serving the Pittsburgh District were required to reduce their lake cargo coal rate from that district to Lake Erie ports from $1.66 per ton to $1.46 per ton. This maximum lake cargo coal rate of $1.46 per ton applies for an average distance of 182 miles, as shown by the report of the Commission in Lake Cargo Coal Cases 1930, 181 I. C. C. 37, page 41, and develops earnings of 8.02 mills per ton mile, which are less [fol. 1542] than the earnings developed by any of the ex-river rates from the Wheeling's River Division points. The rate of $1.43 from the Ohio No. 8 and Cambridge districts required to be established as the maximum by the Commission in Docket No. 1500 7 develops earnings of 8.75 mills per ton mile from the Ohio No. 8 District and 8.06 mills per ton mile from the Cambridge District for dis-

tances of approximately 163 miles and 177 miles, respectively. These earnings compare favorably with the earnings on the Wheeling's ex-river rates to Cleveland and Lorain.

Following the decision of the Commission in Lake Cargo Coal Rates 1925, the lake cargo coal carriers serving the other Ohio fields voluntarily reduced their rates from the Hocking, Pomeroy, Crooksville and Jackson County Districts (288) to Lake Erie ports to maintain the parity which had existed for many years between these districts and the Ohio No. 8 and Cambridge Districts.

Thus the rate of $1.43 now applies to districts having a maximum haul of 259 miles and develops earnings as low as 5.52 mills per ton mile. The table at page 41 of the Commission's decision in Lake Cargo Coal Cases 1930, 181 I. C. C. 37, also shows a number of lake cargo coal rates from other coal districts, but the only two which are comparable from the standpoint of mileage are those from the Freeport District of $1.31 for 164 miles and from the Butler-Mercer District of $1.14 for 99 miles. That is shown on our Exhibit F-59.

The rate of $1.15 covering the movement of ex-lake bituminous coal from Chicago, Ill., to Rockport, Ill., for a distance of 104.8 miles was found to be a maximum reasonable rate in the case of South Chicago Coal & Dock Company v. Belt Railway Company of Chicago, et al, 185, I. C. C. 501. It develops earnings of 10.97 mills per ton mile, which are less than the earnings developed by the present rate of $1.02 to Canton and Massillon for hauls of 87 miles and 80 miles, (289) respectively.

I now desire to introduce an exhibit, No. F-60, being a statement consisting of one sheet, showing a comparison between the rates and earnings on ex-river bituminous coal from our River Division stations to Canton, Cleveland, [fol. 1543] Lorain, South Lorain and Massillon, and the rates and earnings on the maximum mileage scales prescribed by this Commission on crushed stone and crushed slag from Hillsville, Midland, Sharpsville, Shaw Junction, Walford, Pa., and Weirton, W. Va., to destinations in Ohio. This scale was prescribed by the Commission in the proceeding known as Rates on Crushed Stone, Gravel, Sand and Slag within the State of Ohio, Docket No. 25020, 191, I. C. C. 206.

(Respondents' Exhibit F-60, Witness Adell, received in evidence.)

Under the maximum scale prescribed in that proceeding, interstate rates on crushed stone and crushed slag would be $1.25 per ton for hauls of 147 and 149 miles and $1.00 for hauls of 87 and 80 miles, producing earnings per ton mile slightly lower than those developed by our ex-river rates. However, the report in that proceeding shows that the average loading of crushed stone is but 55.5 tons and of crushed slag 54.72 tons per car. The earnings per car and per car mile on crushed stone and crushed slag under this maximum scale would, therefore, be substantially lower than the earnings per car and per car mile under the Wheeling's (290) ex-river rates. This is shown by the record.

Crushed stone and crushed slag are shipped in open-top cars and are not susceptible to loss or damage. The value of this crushed stone is shown in the report in Docket 25020 to be 80 cents to $1.10 per ton and the crushed slag 60 cents to $1.10 per ton. These values may be compared with the value of 94 cents per ton for bituminous coal testified to by Mr. Kerr in this proceeding on last Monday. As shown in this report, the movement for the period May 1st to October 1st, 1930, on crushed stone was 32,150 carloads, and for slag, 22,874 carloads. The I. C. C. Statistics for the year 1931 covering the Central Eastern Region shows a movement of 55,221,158 tons of crushed stone, and 2,690,781 tons of slag.

My last exhibit, No. F-61, is a statement consisting of three sheets, showing a comparison between the earnings per car and per car mile on ex-river coal from our River Division points to Canton, Cleveland, Lorain and Massillon, and the earnings per car and per car mile to the same des-
[Fol. 1544] tinations under maximum mileage scales as prescribed by the Interstate Commerce Commission on ground or pulverized coal, coke, brick, N.O.S., brick, common pulpwood, Culet and cyanamid, and by the Public Utilities Commission of Ohio on anthracite. The heading of this exhibit is not exactly correct, as one of the scales used, the next to the last on sheet 1, was prescribed by the Public Utilities Commission of Ohio. All of (291) the other scales used for comparison were prescribed by the Interstate Commerce Commission.

(Respondents' Exhibit F-61; Witness Adell, received in evidence.)

It will be noted that for like hauls the earnings per car and per car mile on the ex-river bituminous coal are greater in every instance, with one exception, than the earnings per car or per car mile on the compared commodities. While certain of these commodities, such as common brick, amlesite and cullet, are generally shipped in open-top equipment, the others, namely, ground or pulverized coal, coke, brick N. O. S., pulpwood and cyanamid are customarily shipped in box cars. All these compared commodities move in substantial volume in this territory.

The values of the compared commodities are approximately as follows:

Ground or pulverized coal: $8.75 to $9.00 per ton at the mill, as shown by the report in American Radiator Company v. New York Central Railroad, et al, 159 I. C. C. 139, at page 142.

Coke: Value in Ohio, $3.81 to $6.69 per net ton in 1928, as shown by the proposed report in I. & S. Docket No. 3511.

Brick, Nos: $7.00 to $14.00 per net ton, and common brick $6.50 to $10.00 per net ton, as shown by the report in National Paving Brick Association v. A. & V. Railroad, et al, 68, I. C. C. 213. (292).

Amlesite: $6.00 to $8.00 per net ton, f. o. b. Shaw Junction, Pa., as shown by the report in Interstate Amlesite Company v. A. C. & Y. Railway, et al, 173, I. C. C. 436.

[fol. 1045] Pulpwood: $4.85 to $9.00 per net ton, as *whown* by the report in West Virginia Pulp & Paper Company v. B. & O. Railroad Company, et al, 177, I. C. C. 719.

Cullet: $7.50 per net ton, as *whown* by the report in 146 I. C. C. 780.

Cyanamid: $32.95 per ton, as *whown* by the report in American Cyanamid Company v. A. A. Railway Company, et al, 179 I. C. C. 139.

These exhibits clearly indicate that the present rates on ex-river coal from the Wheeling & Lake Erie Railway Company's River Division points to northeastern Ohio are maximum reasonable rates. (293.)

By Mr. Martin:

I heard the testimony of Mr. Kern given on Monday in this proceeding. I have given consideration to the ex-river rates which he proposed from the Wheeling and Lake Erie River Division ports to Cleveland, Lorain, Canton and Massillon and to the rates which he proposed from Conway and Colona to the same destinations.

The rates which Mr. Kern proposes from the so-called lower Ohio River ports which would include all of the ports on the Ohio River between Steubenville and West Wheeling are exactly the same as the local rates from the Ohio No. 8 District to these destinations required to be established by the order of the Interstate Commerce Commission in I. C. C. Docket No. 25566 (now under attack in the United States District Court for the Southern District of Ohio Eastern Division) and are higher by 29 cents per ton as to Cleveland and Lorain and 18 (294) cents per ton as to Canton and Massillon than the existing No. 8 rates.

If the order of the Commission in Docket No. 25566 is enjoined, the proposed ex-river rates would thus be substantially higher than the existing local rates to the same destinations*l* if the order is not enjoined and the increased local rates become effective, these local rates and the ex-river rates, which are in the nature of proportional rates, would be exactly the same. In either event the proposed ex-river rates would be only paper rates. The mines in the No. 8 District would not use them, for to do so would require them to pay in addition to the local rates the cost of barging [fol. 1546] and transferring the coal.

The mines in the Moundsville District of West Virginia across the Ohio River could not use these rates. These mines pay all-rail rates of either $1.74 or $1.84 to Cleveland, and an all-rail rate of $1.84 to Lorain. The mines which pay an all-rail rate of $1.84 to Cleveland and Lorain would have a margin of only 10 cents to cover the cost of towing and transfer, which is less than the current charge of the Belmont Supply Company at Martins Ferry for performing the transfer service only on ex-river coal.

The mines in the Pittsburgh and Connellsville District could not use such a rate. The all-rail rates to Cleveland and Lorain from these districts are $1.84 from the Pittsburgh District, (295) and $1.80 from the Connellsville Dis-

trict. The margin of 10 cents on Pittsburgh District coal and 16 cents on Connellsville District coal would be entirely too low to cover the cost of the long barge haul from Pittsburgh District mines or Connellsville District mines to the lower Ohio River ports, and the cost of transfer from barges to cars.

While the rates proposed by Mr. Kern from the lower Ohio River ports would be paper rates the case is different with the rates which he proposed from Colona and Company; for example, he proposes a rate of $1.51 from these ports to Cleveland and Lorain. This is 33 cents a ton less than the Pittsburgh all-rail rate to these destinations and 39 cents less than the rate from the Connellsville District. An operator in the Connellsville District who could ship coal either by rail or water would, therefore, have a margin of 39 cents to cover the cost of moving coal by water to Colona or Conway and thence under the ex-river rates to these destinations. Deducting the published 12-cent transfer charge, would leave him 27 cents to cover the barge movement. The water haul from Monongahela River mines to Colona or Conway is about 50 miles shorter than to Mingo Junction and about 67 miles shorter than to Martins Ferry. [fol. 1547] But this is not all. If the all-rail rates from the Ohio No. 8 District to Cleveland and Lorain are restored to their former level of $1.74 as Mr. Kern expects, they will be 23 (296) cents a ton higher than the ex-river rates which he proposes from Colona and Conway to the same destinations. A river mine in the Ohio No. 8 District desiring to ship coal to Cleveland on these ex-river rates through Colona or Conway, would, therefore, have a margin of 23 cents per ton to cover its cost of bargina and transfer at Colona or Conway.

As I have shown above these mines could not make any use of the proposed ex-river rates from the lower Ohio River ports to the same destinations.

To sum up the matter, the rates proposed by Mr. Kern would absolutely eliminate the Wheeling from the ex-river coal traffic whether from mines on the Monongahela, Allegheny or Ohio rivers, but would leave the protesting carriers with ex-river rates sufficiently low to compete with the all-rail rates in the movement of coal to Cleveland and

Lorain ex-river from mines on the Monongahela and Allegheny rivers and probably from mines in the Ohio No. 8 and Moundsville districts on the Ohio River.

As I have indicated, in order to accomplish this result, Mr. Kern places his proposed ex-river rates from the Wheeling's river ports on an equality with the former local rate from the No. 8 District, while from Colona and Conway he proposes a rate to Cleveland and Lorain which is substantially lower than any all-rail rate to these destinations from the No. 8, Moundsville, Pittsburgh, Connellsville, or Fairmont districts. (297.) As far as I can ascertain there is no instance where the Commission has required, or the carriers have permitted, the establishment of ex-river rates on a level as high as the local rates from the ports to the same destinations. The practice is uniformly otherwise, for example:

The Chesapeake & Ohio Railway publishes a rate of 50 cents per net ton on bituminous coal from the Logan District of West Virginia to Huntington, W. Va., when for trans-[fol. 1548] shipment by river to destinations beyond: The authority for this rate is Chesapeake & Ohio Railway I. C. C. No. 11241, while the local rate for the same haul is $1.08 per net ton as shown in C. & O. I. C. C. 10707.

The B. & O. Railroad publish a rate from the Myeradale No. 1 District to Glenwood, Pa., when for transshipment by or on barges or boats to destinations beyond of $1.15 per net ton which rate also includes cost of transferring coal from cars to barge: The authority for this rate is B. & O. R. R., C. & C., I. C. C. No. 2704, while the local rate from the Myeradale District to Glenwood is $1.39 per net ton as published in B. & O., C. & C., I. C. C. No. 2611.

In South Chicago Coal and Dock Company vs. Belt Railway of Chicago et al., 185 I. C. C. 501, the Interstate Commerce Commission found that a maximum reasonable ex-lake rate on bituminous coal from Chicago, Ill., to Rockford, Ill., for an average distance of 104.8 miles would be $1.15 per net ton, (298) while the local rate between these points is $1.73 per net ton.

Moreover, all of the lake cargo rates to the lower lake Erie ports are on a lower basis than the commercial rates to these same destinations.

Thus from the Pittsburgh District mines to the lower Lake Erie ports the Interstate Commerce Commission prescribed a maximum reasonable lake cargo rate of $1.46 per ton, while the commercial rate to Toledo and Sandusky, Ohio, is $2.39 per ton, and to Lorain and Cleveland, Ohio, $1.84 per ton. From Kanawha, Kenova and Thacker District mines to the lower Lake Erie ports the lake cargo rate is $1.81 per ton while the commercial rate at Lake Erie ports Toledo to Cleveland is $2.39 per ton. From Clinch Valley Nos. 1 and 2, New River, Pocahontas and Tug River District mines the lake cargo coal rate to these ports is $1.96, while the commercial rate is $2.64.

Cross-examination.

By Mr. Orcutt:

The distance via the Wheeling & Lake Erie from Mingo [fol. 1549] Junction to Cleveland (299) is 152 miles; and from Martins Ferry to Cleveland via the Wheeling & Lake Erie 149 miles; and from Mingo Junction to Lorain 154 miles; Martins Ferry to Lorain 151 miles.

From our Exhibit F-55 it correctly appears that between 75 and 80 per cent of our ex-river coal was loaded at Mingo Junction for Lorain. That percentage is approximate.

If 10 per cent is the approximate per cent loaded at Mingo Junction for Cleveland, that is correct. The remainder was loaded at Martins Ferry for Cleveland, Lorain and Massillon. The bulk of the movement has moved from Mingo Junction to Lorain. That distance is 154 miles. (300.)

For about 10 per cent of our tonnage, it goes from Martins Ferry to Cleveland and Lorain, leaving out Massillon which is insignificant, a distance of 151 miles.

As to whether the distance which I have shown on my subsequent exhibits of 147 miles to Cleveland and 149 miles to Lorain is not representative in any way of the actual movement, I would not go so far as to say it is not representative, because if you will check Mr. Kern's Exhibit No. F-8 you will find that the average distances shown on his exhibits, which include average distances from all Ohio River transfer points to Canton, Cleveland, Lorain, Massillon and South Lorain, Ohio, are approximately, if not the same as the distances which I have shown as being applicable from Wheeling & Lake Erie River Division stations.

By Mr. Orcutt:

Q. I am talking about movements on the Wheeling & Lake Erie, Mr. Adell, where the entire movement that you have shown by your exhibits, with the exception of 10 per cent from Martins Ferry to Cleveland, all moved a distance of (301) over 150 miles, and that 10 per cent remaining moved a distance of 149 miles. Do you think that the distances which you have shown on your Exhibit F-56 of 147 miles and 149 miles are representative of the service performed by the Wheeling & Lake Erie, as you have studied the actual movements?

[fol. 1550] A. They are representative for this reason, yes, sir: It is possible to transfer ex-river coal at any point on the River Division of the Wheeling & Lake Erie. You do not have to have an established transfer point.

(Narrative resumed.)

We do not have any facilities at Rush Run. Somebody might take a barge there and transfer coal from barge to car. (302.) I understand the river barges have facilities for transferring the coal. There is no established facility at any point other than Mingo Junction and Martins Ferry.

I said that 147 miles is representative of the distance the coal was moved on the Wheeling & Lake Erie to Cleveland. I am not in a position to indicate any transfer point at any point on our River Division where coal has been transferred and moved to Cleveland, where the distance does not exceed 147 miles—I do not know. In fact, all the points on our River Division at which coal has been actually transferred and moved to Cleveland, the distance from those points to Cleveland is more than 147 miles on the coal that has moved.

I think that is true as to movements to Lorain, which, in all instances, exceeds 149 miles, the distance which I have shown in my exhibit F-56. I have used those distances throughout our exhibits for the reason that those are all the points named in the tariff.

I have based our earnings showing upon (303) the average distance from the River Division stations of the Wheeling & Lake Erie.

Now it so happens that the transfer points or the points at which transfer has been accomplished are approxi-

mately the farthest distant points on our River Division from Cleveland and Lorain. I understand that they can transfer at any point on the River Division, but there are no established facilities at the present time at any other points than those, where the transfer has been accomplished.

Q. By including Rush Run, at which there are no facilities, and with miles to Cleveland of 143; by including Stringer, where there are no facilities and the miles to Cleveland are 145; by including Titonville, where the mile-[fol. 1551] age is 144, Warrenton, 142, Yorkville, 145, at none of which are there any facilities, you are enabled to reduce the 152-mile distance from Mingo Junction to Cleveland quite appreciably, are you not?

A. Those stations were not included for that specific purpose. (304) That was brought out in the original case.

Q. They were included?

A. All the intermediate points are named in the tariff.

Q. And there are no facilities at those points right now?

A. There are no facilities at those points right now.

Q. And by including those it reduces materially your Mingo Junction mileage of 152 miles, which has moved 80 per cent of your tonnage. Is not that true?

A. It has had the effect of reducing the mileage.

Q. Yet you say the distances and earnings you have shown are representative of those under actual movement which has occurred. Is not that true?

A. Yes, sir, I believe they are representative.

(Narrative resumed.)

By Mr. Fitzpatrick:

I am asked to refer to Exhibits F-60 and F-61, and if it is true that rates on the compared commodities, crushed stone, crushed slag, etc., are the same, whether these commodities moved ex-river or all-rail. In connection with Exhibit F-60, I do not know how we could move crushed stone or crushed slag from the points indicated to points in Ohio, other than Cleveland or Toledo, (305) via the river.

Referring to Exhibit F-60, I do not locate a rate on crushed slag from Weirton, W. Va., to Cleveland, Ohio. Rates are shown in connection with crushed slag on Exhibit F-60 to Midland, Pa., Sharpsville and Weirton,

W. Va., to points in Ohio other than Cleveland or Toledo, Ohio. I know the location of Weirton, W. Va., with reference to the Ohio River.

[fol. 1552] I am asked whether the slag from Weirton was river or whether it originated locally at that point. I do not know whether they ship slag ex-river from those points. I do not know whether ex-river slag was involved in Docket No. 25020.

Q. I understand your testimony is offered as that of an expert rate man. I am asking you as a rate man, and I will ask you to answer the question.

A. I will answer the question if you will eliminate the word "expert". I do not qualify as an expert rate man.

(Narrative resumed.)

As to whether it is true that of all the rates shown in Exhibits F-60 and F-61, excepting as to coal, the identical level (306) of rates is maintained whether the traffic originates ex-river or locally in cars from a plant. These rates can be used on ex-river traffic, but it appears to me that if anybody had any ex-river traffic to move from Weirton or the other points involved, they would ask the carriers for local rates. (307.)

The rates involved in Exhibit F-60 were covered by the Commission's decision in Docket No. 25020, and ex-river rates were not in question in that proceeding. I am familiar with the rates maintained by your own company on slag, sand and crushed stone. We do not maintain a different level of rates on ex-river sand than if the sand originates at a local bank as a general rule, but we do recognize ex-river and ex-lake competition in establishing rates from or to those lake ports.

I believe we have sand rates from Martin Ferry, Ohio. I do not know whether we handle any ex-river sand through Martin Ferry, Ohio, through the various facilities through which this coal is handled. I have been at Martins Ferry. (308.)

I have been at the plant of the Belmont Supply Company. I do not know that they handle and ship over our railroad from that plant ex-river sand. I know that they are in the sand business. I do not know where their sand originates.

[fol. 1553] We have one published and established rate on

sand from Martins Ferry, whether ex-river or sand from trucks, but to Cleveland, Ohio it is lower than it is to other destinations. That is because of the Interstate Commerce Commission recognizing that Cleveland had to contend with lake competition. But the rate itself applies as to the point of origin whether the sand is ex-river or originates locally at Martins Ferry.

I do not know that I can mention one commodity in Exhibits F-60 and F-61 as to which there is any lower level or rates ex-river than (309) applies on the same commodity moving locally. The carriers may have established ex-river or truck competitive rates from some of these points. I do not know offhand. I know they are establishing water-compelled rates every day that are on a lower level than the rates shown in this exhibit.

A water-compelled rates is not exactly an ex-river rate.

Incidentally, those two exhibits were not offered to support an equality of rates as between ex-river and all-rail; they were presented for one purpose only: To show that the earnings on our rate of $1.27 from our River Division stations to Cleveland and Lorain, and $1.02 to Canton and Massillon are maximum reasonable rates.

That is a fair statement that most of the commodities in the exhibit, and with which I made comparisons, are other than coal. As to whether I gave any study to the decisions of the Commission in which coal rates were prescribed or approved as influencing my opinion on that point, I think you have got all those comparisons or exhibits in the original hearing. We have got quite a number of coal exhibits in there.

I am asked to refer to one decision mentioned in (310) Exhibits F-60 or F-61 that was not announced before the decision in Docket No. 25566. Your brick and your N. O. S. brick, and common brick have been in for years. I believe all of those decisions were issued some time before the decision in Docket No. 25566.

I cannot tell you in reference to Exhibit F-55 as to the number of days on which coal was offered from these two points, the minimum, the number of cars, on any one day, [fol. 1554] and the average number of cars from each point per day. (311)

I would not personally have any information as to where that tonnage shown on Exhibit F-55 originated. Pardon

me. It could be obtained. This information has been taken from the agent's records, and I believe his way bills will show the point of origin. (312)

I heard the testimony of Mr. Triem that there was some switching arrangement between the Wheeling & Lake Erie and the Pennsylvania as to one of the unloading facilities at Mingo Junction, and that the Pennsylvania had ceased to use that facility. I do not know whether or not that particular facility is the one through which we are now handling our tonnage at Mingo Junction.

I have the tariff publishing the ex-river rates in front of me. There is limitation in that tariff as to the origin of this coal.

My understanding of the tariff provision is that the limitation is the same as the limitation which the Commission placed upon those rates in its decision, that is, it should be from mines on the Ohio, Allegheny and Monongahela Rivers.

I am asked whether there is any limitation in our tariff that it shall be unloaded (313) through any particular facility. Our tariff has no such provision.

Redirect examination.

By Mr. Martin:

These averages which I have shown as the average distances to Cleveland, Lorain, Canton and Massillon are the average distances from which the ex-river rates or our company actually apply.

As to the question of the ability of a shipper to transfer coal at any one of these points, I had in mind the fact that that could be done by the type of derrick boat such as being used by the Baltimore & Ohio at West Wheeling.

That boat is moored in the river alongside the Baltimore & Ohio Railroad Company track at that point.

It is my understanding that those boats move up and [fol. 1555] down the river and moor at different stations, wherever traffic is offered for transfer from river barges to railway cars. (314)

I do not know of any actual movements ex-river on any of those rates on Exhibits F-60 and F-61.

As to whether the decisions shown in Exhibits F-60 and F-61 were all handed down prior to the decision in Docket

No. 25566, it is a recent decision, in the last two or three months. I believe it was handed down in the first week in May of this year.

By Examiner Simmons:

That tariff provides that the rates will apply from these ex-river division stations when loaded in cars, and the rates are restricted so that the ex-river coal tariff can only be applied on coal originating on the Monongahela, Allegheny and Ohio Rivers. Any origin switching at the river division station is an addition to the rate. (315)

We do not publish that 12-cent lifting charge. The only roads which publish that 12-cent lifting charge are the roads serving Colona and Conway. The other carriers which have ex-river rates from the so-called lower Ohio River ports, I believe carry no reference as to this 12-cent charge. Our failure to publish that 12-cent lifting charge is due to the fact that we do not own the facilities at those points. (316)

Examiner Simmons: Is that lifting charge still 12 cents?

Mr. Martin: At Martins Ferry.

The Witness: Colona and Conway.

Examiner Simmons: I am speaking of those two points, Martins Ferry and Mingo Junction.

Mr. Martin: At Martins Ferry it is.

Examiner Simmons: Are those facilities open for all alike?

[fol. 1556] Mr. Martin: Not at Mingo Junction but at Martins Ferry they are.

Examiner Simmons: Anyone can use them and the same charge applies uniformly, not one charge for one and another charge for another?

Mr. Martin: That is true. We are informed that for the transfer service the charge has been 12 cents per ton, as testified to by the President of the Belmont Supply Company at the original hearing. (317)

(Narrative resumed.)

My understanding has always been that the transfer charge of the Belmont Supply Company at Martins Ferry, Ohio, is 12 cents. In order to be sure of that, that I was right, I called the President of the Belmont Supply Com-

pany on the long distance telephone, I believe it was Monday morning, and asked Mr. Meister, by name, whether or not his charge was 12 cents, and if at any time he had made a higher or a lower charge, and his reply was "Absolutely not. Our charge is 12 cents per ton."

By Mr. Bull:

Q. Now, Mr. Adell, this record shows through an exhibit which is taken from Docket No. 25566 and introduced by one of the witnesses for your company, that the towing and lifting charge, as I recall it, on some coal which moved through that plant to your company was 18 cents. Do you think, then, that you can properly deduce from what you have just said, and (318) from the exhibit, that the barge charge was 6 cents.

A. I would not say that you can deduce anything. I am telling you what the charge is. What the 18¢ covered, I do not know. It supposedly covered the barge and the transfer charge.

By Mr. Fitzpatrick:

The same company handles the coal, the Belmont Supply Company.

I mean by my statement the Belmont Supply Company charged and received 12 cents a ton for handling the coal from barge into cars. That is my understanding of their charge for transfer.

[fol. 1557] Examiner Simmons: I am wondering if it would be possible for the Wheeling to publish that charge. Section 6 says, among other things, that the schedules shall be printed and posted and filed, "shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect or determine any part or the aggregate of such aforesaid rates, fares, and charges, * * *" and so forth.

My point was, if that charge could be published, there would not be any chance for a variable charge by different shippers (319) or at different times.

Mr. Martin: That is a matter, perhaps of a legal nature

or mixed traffic and legal matter. I do not know that we are prepared to give the answer here, except our present view is that we have no right to publish the charge because we have no control over the facilities. We would have to rent the facilities to give us a right to publish the charge and control the handling on that basis.

Examiner Simmons: You have no such situation at the present time?

Mr. Martin: No, sir. They represent an independent transfer facility.

The Witness: Mr. Examiner, if I may correct the record at this point, I did not give the proper answer to Mr. Fitzpatrick's question, and I do not think he had that in mind. He wants to know—or perhaps it was Mr. Bull—whether or not this particular traffic that moved at a barging and transfer charge of 18 cents moved through the facilities of the Belmont Supply Company. I note in Mr. Kern's Exhibit F-44 that this particular tonnage moved through the facilities of the Wheeling Steel Corporation. That was a transfer and barge charge of 15 cents, covering traffic from the Costanzo Mine at Warwood, W. Va., across the river from Martins Ferry. (320)

Mr. Bull: I perhaps referred you to the wrong exhibit, because I know that it was one of those exhibits. The one I think I must have had in mind is Vilas' Exhibit No. 155, which is in this record. I forget the number.

[fol. 1558] A. Vilas' Exhibit No. 154 is in this record as Kern's Exhibit F-54.

Examiner Simmons: There was some testimony in I. & S. Docket No. 3619 which possibly came in at the argument, a statement to the effect that some of those lower Ohio River mines might load coal into a barge or barges, tow it out into the middle of the river, make the transfer, and bring it back to one of your transfer points at such a lower barge and lifting rate that you could defeat the lake cargo rate or the local rate to the considered destinations. Have you any comment on that situation? Do you know anything further about that since the original case?

The Witness: The only comment I can make on that is what was presented in the original hearing, that we were agreeable to having these ex-river rates restricted so that they would only apply on coal originating on the Allegheny and Monongahela rivers.

Examiner Simmons: Give me your opinion on this: Is it your view that the Commission, as suggested by counsel, could restrict ex-river rates so as not to apply from the lower Ohio River points without creating discrimination? (321)

The Witness: We are entirely agreeable to that.

Examiner Simmons: Do you think they can do it without creating discrimination?

The Witness: I do not know.

Recross-examination.

By Mr. Orcutt:

I was talking about the charge at Martins Ferry. From our Exhibit F-55 it appears that of our ex-river tonnage about 10 per cent was loaded from barges at Martins Ferry and the other 90 per cent was loaded from barges at Mingo Junction. I can not state for the record what the transfer charge is at Mingo Junction where 90 per cent of our traffic moves. That is a privately owned facility and I do not know what their charge is. I know of no way that I can find out.

The Carnegie Steel Company transfer facility at Mingo Junction is not open to the use of the (322) public. My understanding is that the only coal that moves through there [fol. 1559] is Steel Corporation coal.

I do not know off-handed if from those statements you are correct in assuming that from our Exhibit No. F-55, that the 90 per cent of the tonnage which we have moved ex-river is Steel Corporation coal, approximately 90 per cent. It would seem that way from the statement, the exhibit.

I do not believe we have moved any through Mingo Junction for any one other than the Steel Corporation interests.

I am asked if I know anything about what has happened to the $300,000 our company had ready to construct transfer facilities with at Brilliant, and testified to at the former hearing in this case; that is over my head. I do not believe we have ever constructed those facilities. I do not know a thing about any attempt to construct them or any start toward their construction.

By Examiner Trezise:

I think it is a correct statement that, except at Colona and Conway, (323) these tran[illegible] charges are not published,

and if they are performed by a private individual there is not anything to require this private individual to observe that particular charge except perhaps for policy purposes.

By Mr. Martin:

The fact is, Mr. Adell, your investigation discloses that their transfer service——

Mr. Orcutt: Why do you not let him testify, Mr. Martin? You are stating what the fact is and asking him the question.

Mr. Martin: All right, if that will save a lot of objection.

(Narrative resumed.)

The charge which has been made by the plant at Martins Ferry for the transfer service from barge to car at that point is 12 cents uniformly. That has existed since the date the tariff was published. I do not know a thing about their charge for lifting sand and gravel. (324)

[fol. 1560] By Mr. Orcutt:

It has been my understanding right along that the 12-cent charge was the charge, but in order to verify that understanding I called Mr. Meister up and he confirmed it. My understanding is based on what I have heard and my conversation with Mr. Meister. I have not seen any receipted bills covering the transfer.

Q. Do you have any direct knowledge of your own about it, except what has come to you from somebody else, a hearsay source?

A. What do you mean by "direct"?

Mr. Martin: I object to the qualification of hearsay.

By Mr. Orcutt:

Q. Any direct knowledge that you have by having come in contact with the actual movements and knowing what the charge was?

A. I could not possibly have any direct knowledge unless I saw the freight bill or the transfer charge bills, or something of the sort. (325)

Examiner Simmons: I am wondering if these lifting charges or barge charges are quoted in the contracts of pur-

chase. Otherwise, how does the shipper know what he is going to pay?

Mr. Martin: As to that, I cannot say. We have no evidence on that.

Examiner Simmons: We have the situation here that at Colona and Conway there is a published lifting charge and at Mingo Junction there is not.

The Witness: We have no information other than this: On this particular movement from Warwood and Costanzo Mine, the barge and transfer charge was 15 cents. Warwood is directly across the river from Martins Ferry, and if we deduct 12 cents for transfer, that leaves 3 cents for barging, which apparently is ample for that cross-river movement.

Examiner Trezise: If there is nothing further, you may be excused, Mr. Adell, and we will take about a three minute recess.

Mr. Orcutt: I think the Vilas Exhibits show how that charge is handled on the Ohio River. It is lumped together with the towage charge.

Mr. Martin: I want this on the record, then: That does [fol. 1561] not purport to show that every cargo that passes through that plant is passed through on that basis.

Mr. Orcutt: For instance, the record shows it does, and you can show anything else you want to. (326)

Mr. Martin: No, Mr. Orcutt, so far as the record shows, it shows that this transaction was made upon that basis, but it does not contain anything as to the separate transfer charges.

Mr. Orcutt: All right, you can show other transactions which are made, showing a separate charge, if you can.

Mr. Martin: We are not interested in that.

Mr. Orcutt: I thought that you were not.

Examiner Trezise: Very well, we will take a recess.

(Thereupon a short recess was taken.)

Ray L. Berry was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Orcutt: Mr. Examiner, the suggestion has been made that it be stipulated by the parties here that the tariffs

naming the ex-river rates from Colona and Conway and from the Wheeling & Lake Erie points on the Ohio River and the Pennsylvania Railroad and Baltimore & Ohio points be considered as though physically in the record, so that we can refer to them if desired.

Examiner Trezise: I think that is a very good suggestion. Is that agreeable?

Mr. Martin: I have no objection.

Examiner Trezise: It will be so understood. (327)

By Mr. Blackford:

My name is Ray L. Berry, Wheeling, W. Va. I have been engaged in the production of coal and its sales for the past twenty years, always in Eastern Ohio and Wheeling Northern Panhandle of West Virginia. At present, and for the past twelve years I have been employed with the Costanzo [fol. 1562] Coal Mining Company and its associate corporations. At present I am Vice President and General Manager of Sales of (1) Costanzo Coal Mining Company, (2) Wheeling Coal Company (known as Costanzo Mine), (3) Wheeling Valley Coal Corporation (known as Richland Mine), (4) Elm Valley Coal Company (known as Gene Mine), (5) Vice President and Director of the Costanzo Transportation Company, operating tow boats and transporting bituminous coal on the Ohio River. Since about 1922 I have had charge of sales of the coal produced by the Costanzo Coal Mining Company and the above named associate companies. This began with a production of perhaps 50,000 tons yearly. In 1932 our companies produced approximately 1,400,000 tons of coal.

The Richland Mine is located in the City of Wheeling and the Costanzo Mine adjoins the north boundary line of the City of Wheeling. Both of these mines are located on the Pennsylvania Railroad (328) with Ohio River facilities at the present time.

The production annually of coal of the Wheeling Coal Company (Costanzo Mine) during the past five years is: 1928, 580,629 tons; 1929, 595,011 tons; 1930, 534,451 tons; 1931, 542,833 tons; 1932, 689,623 tons; 1933 to June 1— 242,111 tons.

The Costanzo Mine has been in operation almost continuously during the past five years.

Since 1928, and up until the present time, practically all

the coal produced by the Costanzo Mine has been shipped on the Pennsylvania Railroad with the exception of a very small amount by truck.

I am asked to give the production of coal of the Wheeling Valley Coal Corporation (Richland Mine) during the past [fol. 1563] five years. We acquired this property and assets of the Richland Mine about May 16, 1928, and since that time up until the present, the production of coal from the Richland Mine has been as follows: 1928, 146,084 tons; 1929, 194,186 tons; 1930, 243,339 tons; 1931, 405,179 tons; 1932, 614,391 tons; 1933 up to June 1, 282,748 tons.

All of which was shipped on the Pennsylvania Railroad and Ohio River, except a small amount which was shipped by truck into the City of Wheeling.

Referring now to the properties of the Costanzo and Richland Mines, I am asked in what coal freight territory are these properties located. They have always enjoyed a competitive freight rate to points practically inside of straight lines drawn from Wheeling, W. Va., to Cleveland, Ohio, and from Wheeling, W. Va., to Rochester, N. Y., and Canada, with the districts of Ohio and Western Pennsylvania. Our mines are located in the Wheeling Panhandle District.

I am asked to briefly mention the territories and districts in the State of Ohio in which our coal shipments by rail have been limited on account of railroad freight tariffs prior to August 1, 1932. The shipments into Ohio by rail means were limited to Cleveland, Ravenna, Alliance and points east of a line fom Alliance to Wheeling. All other points west, including (330) Akron, Massillon, Canton, Toledo and northwest, central and southern part were excluded. Only the small portion, being the northeastern section of the State.

Beginning with the year 1928, the tons of coal shipped from our Costanzo and Richland mines by rail into Cleveland, Alliance, Orville, Akron, Canton, Massillon and Lorain, were approximately 700,000 tons from January 1, 1928 until July 1, 1932, or an average of approximately 160,000 tons annually.

[fol. 1564] I am asked what, if any effect did the rates and charges for the intrastate transportation of bituminous coal in car loads from the Eastern Ohio mines to destinations in Northweastern Ohio, from and to which the Pub-

lic Utilities Commission of Ohio fixed or authorized rates by orders in its docket, have upon our rail shipments from the Costanzo and Richland mines. (331)

The establishment of the intrastate rates mentioned in your question prevented us shipping any coal by rail to the above mentioned points and threw us out of the market.

By Mr. Blackford:

I am asked what was done by our companies to meet this condition.

By order of the Interstate Commerce Commission the ex-river rates were established July 1, 1932. Our companies, during the month of July, did not avail themselves of this rate to any great extent. We only shipped during the month of July about 2,000 tons of coal ex-river. In the month of August we shipped about 2,000 tons. In the month of September about 1,300 tons, but during the month of September, 1932, we found that we had lost the Ohio market which I have named, and we immediately began making our plans to acquire river equipment and water-craft to avail ourselves of the use of the ex-river rates instituted by the Commission. We found, that to meet these conditions, a large amount of money must be invested by our Transportation Company. We knew that the ex-river rates had been established by the Interstate Commerce Commission. We also knew that the United States Congress, in the Transportation Act, Section 500, had declared its policy to be to promote, encourage and develop water transportation, service and facilities, in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation. Knowing this policy of the (332) United States Congress, and having faith in our ability to regain, at least, a part of the coal tonnage which we had lost in the State of Ohio, we planned and did make what is to us investments of sums of money which are large, and since that time we have acquired by purchase and lease water-craft, propelling and barge equip- [fol. 1565] ment, docks and conveyors, which have entailed an investment of $150,000.00, which is used to load and transport coal to the terminals provided in the Ex-River cases.

This expenditure of approximately $150,000 was allocated: $50,000 on boats; $60,000 on barges; $40,000 on construction of river dock and conveyor.

Since the establishment of the ex-river rates on the Ohio River we have shipped ex-river: in 1932, 45,788 tons; in 1933, to June 1, 80,112 tons.

My answer to the last question shows that for the five months in 1933 we shipped almost twice as much coal ex-river as we did in 1932. This is to be attributed to the investment that we made in river equipment and the possibility to transport coal.

In this case, at a former hearing, my attention is directed to evidence introduced by the Wheeling & Lake Erie referring to a barge of coal (333) purchased from our company from its Richland Mine with reference to the transportation costs of that barge of coal to the Martins Ferry terminal. I have knowledge of this transaction. A charge of 12 cents has been set up as the transfer charge by the railroads at terminals. On or about November 16, I had a telephone call from Mr. Barr of the Wheeling & Lake Erie Railroad at Cleveland, talking concerning quotation to the Grock-Vilas Company for a barge of coal. In conversation, I was advised that the Belmont Supply Company at Martins Ferry would furnish the barge and transportation of coal, and I gave a quotation of $1.00 at the mines. Later, when talking with Mr. Meister, the manager of the Belmont Supply Company, I learned that he had none other than a small wooden barge to transport the coal in and no boat. All that I can remember is that a conclusion was arrived at on my part of taking one of our large steel barges that we had loaded over to their unloading dock because we did not want to let any wooden barge be put in our harbor with our steel barges, and upon learning that he really had no boat to tow the coal I said we would let our own boat take the barge across, which is a distance of about a mile. Upon talking about price, Mr. Meister said he had 15 cents in it and the unloading—that means both—and would be glad to give us three cents (334) additional [fol. 1566] for the coal. There really was no transportation charge set up for the towing or the barge rental. It is unfair to take this transaction as a base for figuring the cost of river transportation of coal from our dock to the terminal of the Belmont Supply Company at Martins

Ferry. It involved only one transaction and one haulage and it was done more to favor Mr. Meister than for any other reason.

As an officer of the Costanzo Coal Mining Company and its associate corporations including the Costanzo Transportation Company, I have knowledge of its general business transactions.

I have access to all of its books pertaining to its business transactions.

I have, since I knew that this case was for rehearing before the Commission, examined our records to ascertain the costs of transporting coal from our river dock to the ex-river ports.

I have prepared four statements or exhibits showing the transportation costs from our river dock to Colona and Conway to Steubenville and Martins Ferry.

I have also prepared a statement, showing the cost of (335) combining Steubenville and Martins Ferry together.

I refer first to the statement which I have prepared showing the transportation costs to Colona and Conway, which is Exhibit F-62. From my knowledge of river conditions I know that it would require one boat in constant service, with eight barges in connection therewith, to transport to Colona and Conway 22,500 tons monthly, taking into consideration the movement upstream, the distance of about 65 miles, a roundtrip requiring approximately 36 hours, and the boat's capacity being limited to two barges in tow of approximately 1500 tons each; the boat having a horsepower of about 750 horsepower. It has been our experience that for the last six months just past that the river has been open with the exception of not longer than two weeks.

There is one thing I want to explain about towing coal [fol. 1567] up river with reference to down river, and that is that a boat can come down the river with approximately three times as much coal as upstream, and the statement made in my testimony as to (336) the Ohio River being opened means this: That the locks, the wickets, were not up, making lock water. I checked into it and found out that there were only about three weeks, say, between two and three weeks all told, in the past six months, that that river had lock water. In other words, it was open all the time with the exception of that time.

We have had a man, a captain of a boat of the Carnegie Steel Company, who is good authority, say that he does not know how our boat was able to push two barges upstream in open river at a time. That is the reason for my making this statement of 1500 tons originally to you.

I am asked to refer now to my Exhibit F-62, to Conway. We took the figures on a boat of a caliber of $75,000 and depreciated it over a period of 12 years. Because of the fact that our coal would be out in 12 years. We took the insurance on a 6¼ per cent basis of the investment, the labor of the crew—(337)

Food for the crew at $1 a day per man and coal of 800 tons at $1 per ton, which is not exorbitant; watchmen, two at $1250 a year, which is not exorbitant; taxes, rope and other supplies, repairs and maintenance—boat and barges; compensation insurance. The figures shown on my Exhibit F-62 are taken from my books and represent actual expenses, so far as we could get them from our records.

Mr. Day: Can you explain as you go along just which items are reflected in your books?

The Witness: There is one thing, for instance, coal.

Mr. Day: Take the item of insurance. Did you actually [fol. 1568] pay $390.63 a month?

The Witness: Yes, sir, that is what the insurance would cost.

Mr. Day: Is that what is actually costs? (338)

The Witness: If you do not insure, you run the risk of losing your boat.

Mr. Day: What I am getting at is, is this an actual *test* cost or is it something that you have taken as a hypothetical figure?

The Witness: No, if you insured your boat, it would cost that much money.

Mr. Day: Do you insure your boat so that it actually costs you $390.63 a month insurance?

In other words, Mr. Examiner, the question of his counsel at the beginning indicated that these figures in the exhibit were drawn from the company's books. I am trying to determine if they are actual book figures or something which the witness has arrived at outside of his own accounts.

Mr. Blackford: Mr. Examiner, we intend these figures to reflect not only the book figures, but there are a few figures, which, as I understand it, are reflections from the books.

Mr. Day: They are not actual charges.

Mr. Blackford: The tow boat is not an actual charge, is it Mr. Berry?

The Witness: A tow boat of this type, if you went out to buy it, would cost more than that. We have attempted in setting these figures up to be absolutely fair in all of them. [fol. 1569] Mr. Day: Mr. Examiner, I object to the exhibit and to the testimony in connection with it, on the ground that there is (339) no basis for the figures. They appear from the witness' answers to my question and his counsel's explanation to have been drawn from the air.

Mr. Blackford: Mr. Examiner, his conclusions are wrong, because we have endeavored to verify, to reproduce, the actual costs. Now there is not any boat company in the world that can give you the actual costs from its books. It cannot be done. You can go at it in different ways.

Examiner Trezise: We understand that. That $75,000 is not an actual boat, is it?

The Witness: To explain that, we bought a boat, and I will tell you——

Examiner Trezise: What was that? If you bought a boat?

The Witness: We bought a boat.

Examiner Trezise: You bought a boat?

The Witness: We repaired it and we traded it, and after we had that for about ten months, we had it repaired again, and we had to repair the second one, and we put very close to $40,000 in repairs in that boat, and I would say that we had some $20,000 in the boat before we started to repair it, and that would be reflected from our books.

Mr. Day: You did not take your book figures?

[fol. 1570] The Witness: That is a much lower cost than it would cost for a boat of that type, if you bought it today.

Mr. Bull: What did you pay for the boat? (340)

The Witness: If you go back into the figures, you would have to say that we paid for the first boat—I think it was between six and seven thousand dollars.

Mr. Day: $6,000 or $7,000?

The Witness: Yes, sir. Then we traded that, and I think we put in $15,000 to boot on it, and we had some repair,

additional money, that is, $15,000 additional money, and we had some repair in the boat before we docked the boat at Parkersburg, and when we docked the boat, we put in additional repair, which meant a new hull under the boat, of somewhere around, I would say, $35,000 to be exact.

Examiner Trezise: Is not this your estimated value of the boat?

The Witness: Yes, sir.

Examiner Trezise: You do not happen to have any expert—what do you know about it—to show the value of the boat you have arrived at? You have arrived at the value yourself?

The Witness: Yes, sir.

Examiner Trezise: That is your estimated value of the boat?

The Witness: Yes, sir.

Mr. Day: The preliminary questions and his answers thereto were to the effect that these figures on his exhibit were taken from his books of account. Now it appears that they are not.

[fol. 1571] Examiner Trezise: He did not take the boat value from his books. That is estimated. (341)

Examiner Simmons: He stated he did not.

The Witness: I stated I did not.

Mr. Blackford: We have it here, Mr. Day, in round amounts.

Mr. Day: I heard the amounts.

Mr. Blackford: Yes, sir.

Mr. Day: And he did not take the insurance figures from his books. Although presumably he paid some insurance, he does not tell us what he paid. He does not tell us what wages he actually paid.

Mr. Blackford: Those are actual figures?

The Witness: Those are actual figures.

Examiner Trezise: Let us go on with the exhibit. If it is not proved, we will rule it out.

The Witness: The wages and fuel for crew, I do not think can be denied: watchmen at $1,250 a year, I do not think can be denied. Rope and repairs and compensation insurance totaled a sum of $5,127.31, in round figures $5,150. Cost of barge rent and insurance, rent figured at $8.50 and the insurance of the barges at 50 cents a day, total $9. It required eight barges for this tow, making

$2,280. Cost of administration for the boats: Salary of general manager, salary of clerk, rent of office, and other miscellaneous stuff, telephone, stationery, etc.

(Narrative resumed.)

By Mr. Blackford:

The total which I find as the cost per ton for towing [fol. 1572] (342) is given at 33.9 cents.

The interest on investment has not been included as a cost, which it states, and no item was allowed as loss to equipment by ice, floods, etc. Loading at mine must be allowed at $100,000. If depreciation, insurance, equipment maintenance, loading, labor, etc., of this equipment are included, it would increase the cost per ton towed approximately 3 cents a ton, computed as follows—and the explanation of that is given there.

My figure of $.3395 a ton does not include the cost of lifting at Colona and Conway.

(Exhibit F-62, Witness Berry, received in evidence.)

I have prepared a statement for Steubenville. I am asked to briefly give the facts, circumstances and conditions which I took into consideration in the preparation of this statement.

(Exhibit F-63, Witness Berry, received in evidence.)

The difference in the first exhibit and this exhibit is that the exhibit to Conway and Colona carries a (343) double crew for the boat. This carries a single crew. And based on a tonnage with five barges. This cost of administration, I do not know whether you know that or not, but that is figured on a ratio basis per ton, on the salary of general manager—I might state this: That we had certified public accountants come in and work with me on this, and they first said "How much coal can be towed from this mine"; and I said $50,000 tons a month". "Do you want to figure on tonnage of 50,000 tons a month?" I said, "yes". He said: "How long will it be before all the coal gives [fol. 1573] out?" We figured the acreage and figured we would run it out approximately 12 years, with the exception of some coal which would go all-rail. That is not exorbitant in any way.

This cost of administration is figured on 600,000 tons a year, and that is the reason for that, the same as in the exhibit for Colona and Conway. That makes $.01167 per ton.

The total cost for hauling coal is 25.15 cents.

I have the same general remarks to make about items not considered, (344) the same thing there as referred to.

I have also prepared an exhibit for Martins Ferry. That is where the coal is unloaded on the Belmont Supply Company's dock.

(Exhibit F-64, Witness Berry, received in evidence.)

I took into consideration the labor of one-half time single crew, five barges, and the cost of administration on the ratio ton basis. That figure is 17 cents.

Going back to Steubenville, Steubenville is an upriver tow. I have a combined exhibit for Steubenville and Martins Ferry for one month.

I was asked the question if there was a possibility of the boat doing more than that, a boat doing this and a boat doing that. We arrived at 40,000 tons from those mines, 20,000 tons of which would be towed upstream approximately 25 miles (345) to Steubenville, and 25,000 tons would be towed over to Martins Ferry. That exhibit is wrong. It is not towed upstream. It is towed to Martins Ferry approximately one mile. That would be the maximum amount of work that that boat could do double crew.

We then arrived at that cost, dividing that cost, which would be, we thought at 65 and 35 per cent basis, which [fol. 1574] would be fair. This is Exhibit F-65 about which I am now talking, and on a 65-35 per cent basis, with five barges at each place, it would make twenty and a fraction and sixteen and a fraction cents per ton.

In all of these exhibits there is no allowance made for investment of the river tipple.

Upriver to Steubenville from our mine I think we figure 25 miles; to Colona and Conway upstream 65 miles from our mine. (346) I am asked to state to the Examiners what companies we have had occasion to hire to tow coal barges for us during the past year. We have had occasion at several times to hire tow boats from the Wheeling Steel Corporation.

The Wheeling Steel Corporation, without furnishing any barges, charged us the rate of 15 cents per ton from our

river dock to Steubenville, and from Steubenville to Conway and/or Colona 15 cents per ton, or making a total charge of 30 cents from our river dock to Conway and/or Colona. This is for towing only and does not include any charge for barges. These charges, so far as I know, are now in effect.

I hand you vouchers—Wheeling Steel Corporation, for towing coal to Steubenville; towing coal to Conway and Colona. I imagine you want them submitted.

Mr. Blackford: I suppose no one will doubt them. He has them and will offer them.

The Witness: I have them. They are original invoices. (348)

(Narrative resumed.)

I understood yesterday that Mr. Andrews had made a statement that our company had taken some coal business [fol. 1575] from the National Carbon Company at Cleveland, and I wanted to offer some evidence here that we have been shipping coal to the National Carbon Company all-rail for years back. I do not know how long, but if I do remember, I would say, three or four years, and I will say that most of that went through the Cleveland Cliffs Iron Company. (349)

The only thing further would be the complete loss of the additional investment as to the abolishment of these rates. The complete loss of the investment in the equipment was explained heretofore, in which our companies have invested, through faith in the river transportation, and the possible complete loss of business, which would result by disturbing the situation.

There is one other thing I want to say with regard to coal moving from our mines into the Youngstown district. If you take the Ohio mileage you can see that it is only approximately 40 miles from East Liverpool on to Youngstown, and I have been approached by a large trucking company of Ohio, I would say, submitting quotations, and it looks to me as if the total rate could be put on there, including barging to East Liverpool, unloading and trucking into Youngstown, and it would be somewhere around $1. It is my personal opinion that if these rates are increased, it is possible that a lot of this coal will move from our

mines (350) to East Liverpool and be trucked to Youngstown.

(Exhibit F-65, Witness Berry, received in evidence.)

Cross-examination.

By Mr. Orcutt:

This investment of $150,000 in river facilities was made [fol. 1576] prior to our taking charge of the operation at these two mines. We figure one would be about $60,000 and the other about $40,000. We made the last investment ourselves.

I might explain one other thing there. We have two mines on the river. The first one has been there ever since we have had any connection with it.

Mr. Blackford: Mr. Orcutt, I think he misunderstood your question. I think you are referring to his tipples.

Mr. Orcutt: He spoke about an investment of $150,000 in river facilities.

Mr. Blackford: Yes, sir, but that does not include the tipples.

The Witness: River investment, yes, sir.

By Mr. Orcutt:

Q. When did you make that?

A. From time to time, as we went along.

Q. When did you begin, in what year? (351)

(Narrative resumed.)

I think that we started to ship coal in 1930, river coal, on the Ohio River route. That is not when we made the bulk of our investment. As to when we made the bulk of this additional investment, there was an additional investment over and above that. We bought barges last year, and we bought barges this year. I cannot give you the exact date of each one of those purchases.

This $40,000 in the construction of river dock and conveyor was made at our Costanzo Mine in, I would say, February, March and April of this year, 1933. We now have thirty-eight of our own barges, and two more under construction. I do not know whether we owned any barges [fol. 1577] in 1931. I do not remember when we bought

the first five. We had barges leased. We leased barges to start with. We purchased the first boat, I think, in the summer of 1931, and we traded it. The first boat sank. (352) We traded that.

The boat we traded it for was the Shawnee, and we traded that for the A. R. Budd with Hillman. Hillman owned that boat. We did not repair the second boat. We traded that along about the latter part of 1931, and we did not repair the second boat, and put the additional expense on the boat to which I referred of $35,000 or $40,000 until during October of 1932. That is, our boat did not get back from dock until along in the middle of November.

It might be a conception of a lot of people to think that it does not cost any money to transport coal by water, but that is not true. Our lower dock is situated right below the river lock, and I will tell you one reason why this boat sank—and that is not all we sank, but we sank barges and everything else learning something about the river. The river comes down and makes a turn right in front of the tipple and the lock is I suppose 200 to 250 yards north of our tipple. This boat was sitting along the side and a large tow of the Bethlehem Steel Company came down, and instead of cutting it, they dropped the wickets, raised the water below, (353) which is at our tipple, about four feet, and pushed this boat up on the sand, and when the water receded, by lifting the wickets again it just toppled over, because it was caught.

The reason I state that is I want to show that it is an unusual place, where this loading occurs.

[fol. 1578] By Mr. Orcutt:

We treat all of our repairs as capital investments that are out of the ordinary. Any repair which we do to our boats we add on to the cost of that boat.

Q. By the time the 12 years are over, even having charged depreciation, at the rate which you are making repairs your boat will be worth more than it cost you, won't it?

A. No.

(Narrative resumed.)

As to why we use eight barges in our computation of costs to Conway, you have to have two at the mine to load, and you have to have two at Conway, and you have to have

two more in between, going or coming, and you certainly must provide for delays due to fog, ice and everything else. It does not need to be an even number. To that particular point, I would say that.

(354) We are only figuring on taking possibly one and sometimes two at a time, but to Conway and/or Colona, a boat in open river of that type and size, it is physically possible to shove only two barges upstream.

Q. As to Steubenville, you figure on using one or perhaps two. If it should develop that you will take but one barge back and forth, you have figured on two too many barges in your cost, have you not?

A. No.

Q. Why not?

A. The unloading facilities at Steubenville are such that a whole, entirely complete barge might not be unloaded [fol. 1579] during that day. You might have at night a half a barge, and due to the movement of the boat, put in another barge, and you would have to have two barges at that point. The same thing would happen at the mine. It is impossible to operate a boat on a river and tell exactly what time you are going to get to a loading dock or an unloading dock. It might vary, I would say, as far as six, eight or ten hours. And the fog on the Ohio River, or any other river, is such that I might explain by an illustration: I had been away and drove down the river road one morning, I would say between 10 and 11 o'clock, and walked into the office and asked the boy where the boats were, and he said, "They were sitting up at the lock," and I said, "They are sitting up at the lock? Why, I went down that road and the fog did not look so bad to me." It made me sore, if I (355) may say that. I got in a car and drove down there and went up to the boat and the captain was on the boat and I said "What in the world are you doing here?" He said, "The fog is so bad we cannot start out." I said, "There is not any fog. I drove down the road and I could not see any." He said, "All right, come up in the captain's quarters and then you will see it." I went up and he said, "Do you want to go on?" I said, "No, I cannot see."

I put that in as an illustration to show that the fog on the river is much greater than on land.

Q. Now on the bottom of page 2 of your first exhibit F-62 you show a figure of approximately 3 cents per ton loading. What do you mean by that?

A. That is not included. Only mention was made of that.

Q. What do you mean by that? Why is it in there?

[fol. 1580] A. Just put in there for information.

(Narrative resumed.)

It is not included in the $.3395 and should not be included if you figure the cost of transportation only.

Q. I notice on your Exhibit F-64, which treats of the cost to Martins Ferry, you show that it cost you 17.27 cents (356).

A. That is right.

Q. Per ton?

A. Correct.

Q. Your distance is about one mile?

A. That is right.

Q. That is at a cost of 172 mills per ton mile, is it not?

A. I do not think that you could compare railroad transportation with river transportation.

Q. I am not comparing anything. I am asking you if that represents a cost to you of 172 mills per ton mile.

A. I do not know. I have never figured it out.

Q. But on this tow which you moved for the Belmont Supply Company, you only charged them 3 cents, did you say?

A. I did not make any charge.

Q. You towed that for nothing?

A. Absolutely.

Q. In order to sell the coal and move it?

A. That is correct. What I put in my testimony here was that I favored Mr. Meister.

(Narrative resumed.)

Our river transportation facilities are not used some [fol. 1581] time as a sales adjunct to help us make a sale, and where we do not even hope to get back the cost of it as transportation cost. That is not one reason we maintain the facilities (357).

I am asked if having the facilities we do use them for that at times. I stated that I only let that go through at one time, and had that man come back and asked for the

same thing again, it would have been denied. That is not true with lots of deals we make. We do not perform any transportation for interests other than our own.

Our distance to Steubenville is approximately 25 miles, and from Steubenville to Conway it is about 40 miles further.

Q. The Wheeling Steel Corporation charges you as much for the 25-mile haul as they do for the 40-mile haul?

A. No, sir.

Q. They do not?

A. No, sir.

Q. I understood you to say that to Steubenville it was 15 cents and from Steubenville to Conway it was 15 cents.

A. Toronto. The agreement was that the towing from our mine—(358) if I said Steubenville it is a mistake. I do not remember. But the charge for towing from our mine to Toronto—and I believe they took a barge from Weirton at one time to the other ports, which is approximately one-half way, but further than Steubenville.

(Narrative resumed.)

Toronto is approximately 32 miles, and our agreement was that we were to take the tow to Toronto, and if we [fol. 1582] had a tow at Toronto, which they could take on up, it would be 15 cents, and if they picked it up there at our mine it would be 15 cents, and if they took it all the way it would be 30 cents. That was for several barges. It did not make any difference. We never had over two barges to the tow at one time.

As to whether they always take two barges, that cost covered whatever coal they hauled for you.

As to whether they would haul for that price whether it was one barge or six, they did not haul six of our barges, because they have not got a boat to haul them at one time.

I do not know if they have hauled quite a good deal for us. (359) Some.

I do not remember whether they hauled one barge at a time or two. I know it was not over two at a time.

By Mr. Fitzpatrick:

The transportation company is not a separate corporation but is operated as a part of the coal company.

I really do not know how we are depreciating that boat on the books.

As to whether we allowed for a life of 12 years, I would say it is not over 12 years (360).

I am asked if I know the normal life of a boat in use on the Ohio River in these services. I would say that, in my opinion, it would depend upon the use to which it is put. I would say this, in that connection: That I think, and practically know, that using a tow boat for the hauling of coal is as hard a usage as it can be put to in up-river towing.

We are selling coal moving by barge, and coal down the river.

[fol. 1583] We are moving coal down the river by barge to only one point, that is Philo Plant. The distance over the river from the mine to that plant is somewhere around 140 miles.

The charge made for that towing service has varied. I do not know why I should have to give the range here. I will say that our average cost—it would be very hard for me to give that average cost or that figure here. I would say it would run from one dollar down to (351) 60 cents on coal.

It would. I do not know offhand whether that would figure out correctly or not. I could not say that right here.

I know where we are delivering the coal at Philo. We are not delivering the coal out of the barge and onto the bank. They lift it themselves. We have nothing to do with that.

I am asked if I cannot give the exact cost during the past few years for carrying that coal 150 miles over the river from our mine to Philo. I will tell you what I will do. I will sit here and explain why I cannot do that. We started last year some time—on my first visit out to the Philo plant I was told I was a fool for attempting to come down the Ohio and up the Muskingum River. The first tow we had down the river, we got into an ice clog in the Muskingum River and had to return. The second tow we went up the river, I believe. About the third tow we went up and got caught in a flood, and I would say that (362) it took 20 days to make the round trip. So that I believe I can consistently show you figures, on our books, where it actually cost in excess of $1 a ton, figuring at the lowest, the best possible move that we had on that river, of 60 cents.

[fol. 1584] I would say that it is about 80 miles down over the Ohio and about 60 some miles up over the Muskingum, if I get it correctly.

In making our costs, I did not apportion them as between the haul down the river to the junction with the Muskingum; you could not. I would say by far the greater part would include the haul up the Muskingum, but you cannot take any more down than you do up.

In our cost study we show the salary of a general manager. We have a clerk or manager who works exclusively for the transportation company. We have a general manager who practically does not do anything but look after the boat line now. (363)

As to what I mean by "practically," I would say yes, and the same is true of the clerk.

By Mr. Bull:

As to when we did start moving that coal by water to Philo, I cannot give you the exact date. I do not know how much has moved down, and I do not think Philo has anything to do with this at all.

Mr. Blackford: It has nothing to do with ex-river rates.

The Witness: Unless they are attempting to establish a rate at Philo. I will open up my books, if you come to Wheeling.

Examiner Trezise: Have you some point in mind, Mr. Bull?

Mr. Bull: I was wondering if they used the same boat down to Philo as to the other point.

[fol. 1585] The Witness: No, sir.

(Narrative resumed.)

By Mr. Bull:

We are still shipping down to Philo. It gets down there on another boat. (364)

We have got more than one boat, and this is only with reference to the boat which we are actually using upstream to Steubenville.

Our all-rail rate to Cleveland at the present time is $1.74.

We are actually shipping coal from Richland Mine to Conway by water. We are shipping from our Costanzo Mine to Conway by water.

As to why I have not shown the Costanzo Mine in our cost figures, we figured on that that it did not make any difference. You could only figure the cost per ton, if it was

all shipped from one mine. We segregated it the best we could.

We use our own boat to haul the coal from the Costanzo Mine. It is the same boat that we have used in our calculations (365) in these exhibits from the Richland Mine.

Q. Does that boat take one or two barges from the Costanzo Mine and pick up other barges as it goes up the river by the Richland Mine.

A. What are you trying to get at? Do you want to know the distance between the two mines?

Q. No, I want to know how you handle it.

A. There is a certain distance above the lock. I do not know whether those two mines, the openings on land are [fol. 1586] about two miles apart. One is below the lock and one above. I would say if you did not have a tow at one, you could get it at the other.

Q. What I am trying to get at is, how you arrived at all these cost figures, whether they are theoretical or whether they are actual.

A. No, they are not theoretical.

Q. Are they set up? Are they figured according to the way you are actually handling this tonnage?

A. Yes, sir.

(Narrative resumed.)

I am asked whether we are actually handling from Colona to Conway 1500 tons per trip and making 15 trips per month from the Richland Mine. We are practically up to that now. (366)

As to how much we are actually towing from the Costanzo mine up to Conway or Colona, we towed from our Richland Mine to Conway, Colona, during the month of May approximately 20,000 or 21,000 tons. We did not tow any from Costanzo Mine to Colona or Conway in the month of May.

I cannot say that we actually towed two barges per trip, and made 15 trips to either Conway, Colona or both in the month of May. I cannot say that. I would say it is approximately that. The capacity of the boat is no more: I do not recall what we have actually carried up there. I cannot tell you actual tonnage; it is impossible. I do not know whether we have made 15 roundtrips up there during the month of May. (367)

Q. If you only have one boat, where are these two barges which you say are on the river while you have two loading [fol. 1587] at the mine and two at Colona and Conway? What boat has got the other on the river?

A. What is that?

Q. In answer to Mr. Orcutt you said you figured eight barges in connection with your study to Colona and Conway, figuring two being loaded at the mine, two unloaded at Conway and Colona and two on the river. Where are the two on the river? On another boat of the company?

A. No.

Q. Where are they?

A. In readiness to be shipped.

Q. But they are not actually moving?

A. They are not actually moving. They could either be at one port or another port, either at Conway or down at the mine being loaded.

Q. You told Mr. Orcutt you figured two in addition to that.

A. You would have to to effect the tow.

Q. I asked you where are those two?

A. I would say they were tied up, held there waiting for the boat.

(Narrative resumed.)

Our boat does not stay at Colona and Conway while the barges are being unloaded. (368) It comes down the river and leaves the barges up there. Our barges are not in use while they are up there. They would stay up there until he makes another trip. It would depend upon his ability to [fol. 1588] get back up there. He absolutely could not get back up there much less than 36 hours. It would take 36 hours before he could possibly get back up there, and if he was held up for any reason at all, due to a breakdown, fog, or anything like that, it would be longer than that.

As to whether we actually pay one dollar a day for the food of the crew on that boat, it averages that.

As to whether we feed them pretty well,—they live all right.

By Mr. Bull:

Q. What I want to get at now is, that you are moving, both from your Richland and Costanzo mines, certain loads, and how is that handled? (369)

A. I will try to explain that in this way: We take the capacity of the boat in the movement. It comes to one mine or the other and really does not make any difference. The 50,000 tons a month we take as a basis from this one particular mine, as a movement, and we take the cost of that boat, what it would be to move the maximum tonnage of 22,500 tons a month to Conway. If we did not move the maximum tonnage it would cost more money on account of the barges you have in tow.

By Mr. Bull:

Q. Why are you shipping via river, if it is costing you over 33 cents a ton for the water movement, and it costs 12 cents lifting charge at Colona and Conway and $1.27 to Cleveland from Colona and Conway, which, as I figure it, makes a total of $1.73, and you say the all-rail rate is $1.74?

A. We are not shipping that way?

(Narrative resumed.)

Any Cleveland coal that we have shipped, we have put over the docks at Martins Ferry and Steubenville. (370) [fol. 1589] That which is shipped to Colona and Conway is destined to Youngstown mostly.

We do not have any unloading facilities on the west bank of the Ohio River.

I said we had two boats.

I am asked if we have more than one general manager for our transportation company. This general manager is figured on a ratio ton basis, which I tried to explain, of 50,000 tons of all-river coal. I do not know whether that is thoroughly understood or not.

Q. Have you charged all of the salary of a general manager in this study, or is this half of it, and is half charged to the other boat? You have charged $4,800.

A. We figured 50,000 tons a month is the maximum which can be towed.

Q. By one boat?

A. No, practically by both boats. We set up those charges there as a maximum, on account of the run up the river. (371)

Q. Then does the cost of the boat here include the cost of both boats?

A. No, sir.

Q. Will you assume that the only rates that are in issue in these proceedings from the lower Ohio River ports, that is, Steubenville and below, are those of the Wheeling & Lake Erie to Cleveland, Lorain, Canton and Massillon? Will you please state for the record what shipments you have made on those rates within the past six months?

[fol. 1590] A. I suppose that you want to know what has been shipped since January 1st. Is that about it?

Q. In the first instance, yes, sir. What use have you made of the rate?

A. I cannot give you exactly. I can give you a conception of about what I know. In January I think we shipped over your railroad, I would say, six or seven thousand tons. In February we shipped possibly 3,000, and then we started at the unloading dock at Steubenville, and it has been running I would say four (372) or five thousand tons a month, 4,000 or somewhere around there at Steubenville.

(Narrative resumed.)

That is going over the Pennsylvania Railroad from Steubenville. We have not made any shipments over these Wheeling & Lake Erie routes since February of this year.

By Mr. Fitzpatrick:

Our company has installed a screening facility on the far side of the Ohio River, on the Ohio side, and that does not enable us to handle domestic coal on ex-river rates to a very great extent. (373)

Mr. Martin: I would like to offer a planographed copy of a blueprint from the City of Cleveland, to save carrying it around until tomorrow morning, and I will offer it at this time. It was requested by Mr. Baker, and we have gone to the expense of having it planographed.

Examiner Trezise: It will be received as Exhibit F-66.

(Respondents' Exhibit F-66, Witness Kern, received in evidence.)

Adjourned until 10 a. m., Thursday morning. (374)

[fol. 1591] (Hearing resumed at 10:00 o'clock a. m. Thursday, June 29, 1933.)

Proceedings.

J. P. HANNAN was called as a witness, and having been duly sworn, testified as follows:

My name is J. P. Hannan. I am Traffic Manager of the Corrigan-McKinney Steel Company, Cleveland, Ohio. I have held the position of Traffic Manager for that company for seven years.

The plant and operation of the company is at Cleveland, Ohio. The River Terminal Railway serves it.

It has direct connections with the Wheeling & Lake Erie (375) Railway and the Baltimore & Ohio Railroad and with the New York Central through a trackage agreement with the Wheeling & Lake Erie.

The products manufactured by the company at its plant in Cleveland are: pig iron, steel (semi-finished and finished), coke and coke by-products.

I am asked to state the number and capacity of our blast furnaces, our coking ovens and our other mills and facilities at this plant: Four blast furnaces, with an annual capacity of 200,000 gross tons of pig iron each, or a total of about 800,000 gross tons of pig iron a year; 14 open hearths, with an annual ingot capacity of 1,000,000 gross tons; 3 blooming mills, one 22-inch, one 21-inch and one 18-inch, with an annual capacity of 600,000 gross tons of semi-finished steel; two finishing mills, one 10-inch and one 12-inch, with an annual capacity of 250,000 tons of finished steel; four batteries of Kopper coke ovens, 51 ovens to a battery, 204 ovens; annual capacity 1,000,000 net tons of [fol. 1592] coke, using over 1,200,000 gross tons of coal. We use approximately 60,000 tons of coal a month at that plant received under the ex-river rates at the present time, all coming through Colona. (376)

I am familiar with the proposal that has been made here by the carriers in respect of the rate from Conway and Colona to Cleveland. The proposal would make a rate of $1.51 per net ton from Colona and Conway to Cleveland, and that is based on the maintenance of the present differential of 50 cents a ton Cleveland over Youngstown, as I understand it.

I am asked as to the effect of that proposal upon our company, with respect to the use or ability to have any use of the rivers.

Adding the assumed barge charge of 25 cents and the lifting charge of 12 cents would make a through rate of $1.89, against the all-rail rate of $1.90, which would mean that we would discontinue using ex-river coal. Our position regarding it is substantially the same as stated by Mr. Welsh of the Youngstown Sheet & Tube Company, our competitors in the steel industry at Pittsburgh, and in the Wheeling District, and they have the advantage of all-river movement on their coal. The Government investment is there, and the carriers' (377) proposal would deprive us of all chance to participate in its use. In effect, the carriers would make this grant solely for the benefit of our competitors in the Pittsburgh and Wheeling Districts.

The carriers' proposal, from our standpoint, means that we will have no advantage from the rivers, the Government [fol. 1593] investment in the rivers, and that will all be turned over to our competitors. Our tax money is represented in this improvement, as well as that of the carriers and our competitors in the Pitsburgh and Wheeling Districts, and we are entitled to whatever benefit of a river movement is available on our coal. That benefit would represent bringing the coal as far as Colona and Conway in the direction of our destination.

As to whether I made any check of our carloadings on coal being received through Colona under these ex-river rates, our ex-river coal loads about the same as that going to Youngstown, as testified by Mr. Welsh, about 73 tons per car. At a rate of $1.27 from Colona and Conway to Cleveland, this is over $92.00 per car, exclusive of the surcharge. The distance from Colona is a little over 41 miles to Youngstown, (378) and the distance from Youngstown to Cleveland 66 miles, or about 110 miles, which means earnings of about 85 cents per car mile.

We contend that a rate which earns 85 cents per car mile for movement of a heavy and regular tonnage over high traffic density and very favorable lines of railroad, with a substantial return loaded movement in iron ore from the Lakes, is not less than a full reasonable maximum rate.

Cross-examination.

By Mr. Orcutt:

Q. You referred, Mr. Hannon, to a through charge of $1.88. How do you get that through charge, again, if you please?

A. It is $1.27 plus 25 cents plus 12 cents.

Q. The 25 cents is for towing?

[fol. 1594] A. That is correct.

Mr. Baker: I do not think he gave you quite the correct figure. It is $1.51, instead of $1.27, plus 25 cents, plus 12 cents.

(Narrative resumed.)

By Mr. Orcutt:

I am asked what we are paying for towing now. We are not buying it that way now. We are buying f. o. b. Colona. The towing charge is included in the price of the coal.

As to how much is included in the price of the coal for the (379) towing charge, it is not divided that way. I do not know it is less than 25 cents, I understand it is more; but I did not mention what I thought it was, because I never saw the direct figures.

Q. When you got bids on that coal, did you get bids all-rail and ex-river both?

A. I do not know. I did not negotiate that. It was handled by the purchasing department.

(Narrative resumed.)

I have no direct knowledge of my own as to what that towing on the river actually cost in the price of the coal. We purchased this coal prior to the establishment of this ex-river rate, immediately after the ex-river rate was in, in the Connellsville, Fairmont and Pittsburgh Districts. We purchased some before that, as well as operated our own mine, in the Elkhorn field on the Big Sandy Division of the C. & O. in Kentucky.

Redirect examination.

By Mr. Baker:

Our company owns mines down on the C. & (380) O. in [fol. 1595] Kentucky. Two operations on the Marrowbone Branch of the Big Sandy Division of the C. & O. Railway from which we formerly drew our high volatile coal for our Cleveland operation; practically 100 per cent.

Recross-examination.

By Mr. Orcutt:

We still own those mines in Kentucky. They were dismantled between 1928 and 1929.

We get our coal from Fairmont, Connellsville and Pittsburgh.

Even before these ex-river rates went into effect we found it advantageous to abandon our mines in the Big Sandy District of Kentucky and go to Pittsburgh, Connellsville and Fairmont for all-rail coal.

I am asked if these ex-river rates are advanced we will either use the ex-river rates or go back to the movement we had before they were established; we will be forced to.

Before these ex-river rates were established and we were getting coal from the Big Sandy District, we were getting some coal from both river or inland mines, and when the ex-river rates were established the movement to our plant from the inland mines did not cease immediately. It has not entirely ceased since then. There is some movement from inland mines from the Fairmont district.

During the month of June there were 22,000 tons so moved from the inland mines—Fairmont. That is not the contract that has some time to run.

By Mr. Hall:

Q. Mr. Hannan, you spoke of the present consumption [fol. 1596] of your company—at Cleveland, I take it——

A. Yes, sir.

Q. (Continuing:) —of coal coming through Colona as being about 60,000 tons.

A. We just got into normal operation. That is the largest (382) we have taken, and was for the month of June of this year.

(Narrative resumed.)

The ex-river rate went into effect in July of the preceding year.

As to what was our consumption of coal then per month, offhand, I think we had one battery of ovens on then, and it was about 15,000 or 20,000 tons all told at Cleveland; on account of the operation at that time all coming all-rail in

part from Fairmont and in part from Connellsville and the Pittsburgh District.

In addition to that 60,000 tons per month in June through Colona, our company received approximately 22,000 tons from Fairmont and 10,000 tons from Pocahontas No. 3 mines. From Fairmont that moves all-rail.

As to why we continue to get coal from Fairmont, that is an arrangement of the purchasing department. (383) They bought it there. I do not have anything to do with purchasing.

We have not included here in our figure of 60,000 tons anything except the consumption of our company at Cleveland. We have no consumption at any other point.

I was basing the assumed barge charge of 25 cents on the testimony of Mr. Welsh, who testified that he had a contract or a charter at 25 cents, and also Witness Kern submitted evidence, I think, of a quotation from Hillman & Company of 25 cents.

[fol. 1597] I am referring to evidence given at this hearing. If I had not been asked to testify at the hearing I would not have known anything about the 25 cents. So that rests purely upon what is in evidence here now with regard to the 25 cents or any other figure.

As to whether I have any information as to what the river charge is and what it covers, except such as I have gotten from testimony given at this hearing, nothing but hearsay. Not the kind of hearsay I would act on, but just the (384) kind of hearsay that I could read in the papers or talking off the record.

ANDREW H. BROWN was called as a witness, and having been duly sworn, testified as follows:

I have appeared previously for the Cleveland Chamber of Commerce in both of the cases reopened here, I & S 3282 and 3619.

I am Assistant Transportation Commissioner of the Cleveland Chamber of Commerce, and have held that position for some 14 years, prior to which I spent about seven years in the operating and traffic departments of the Lake Shore & Michigan Southern and New York Central Railroads.

Our position and interest in these cases has been fairly well outlined in the previous records, and it won't be necessary for me to do more than just outline it here.

We were first interested in the two finance dockets wherein the Pittsburgh, Lisbon & Western sought a certificate of public convenience and necessity to build a line of railroad into the Youngstown District; and we were interested in that merely as observers. (385)

When rates were published and suspended in I & S Docket 3282, we were more directly interested; but, in view of the [fol. 1598] fact that our rates were not directly involved, nor in issue, we were able to present our position merely as being one that the proposed rate or any proposed rate into the Youngstown District should be accompanied by a properly related rate to Cleveland.

In the decision of that case we were only partially successful. After the decision I began a long series of inquiries as to what the Pennsylvania and Pittsburgh & Lake Erie roads intended to do in the way of publishing rates to Cleveland, and while that series of inquiries was going on the Wheeling & Lake Erie published its rates, which were suspended in I. & S. 3619 and in that case rates to Cleveland actually were published, and we were then in a position to take an active part, with our own rates definitely involved.

At the present time it is our position that in I. & S. 3282 the rate suggested by the Commission as a reasonable maximum is just that: that is to say, that Youngstown was given the least that could possibly be given to it in the face of the record before the Commission. Similarly, the rate of $1.27 to Cleveland is, in our judgment, absolutely the least that could be given to us, because the 50-cent difference over Youngstown we believe to be an absolute maximum, beyond which nothing could be justified. (386)

I have already said in both of these cases that Cleveland's competition is the same as that of Youngstown, and it won't be necessary to add anything more to that. The situation is the same today as it was when those cases were heard.

The only new thing that I wish to introduce is a series of three exhibits, the purpose of which is to correct a misap- [fol. 1599] prehension which seems to have arisen as to my position on the 50-cent difference over Youngstown. I

do not regard that difference as a perfectly reasonable and immutable thing. I do think that it is absolutely the highest thing which could possibly be justified.

As to where that misapprehension appears in the record—by what witness' testimony, no witness' testimony, but I took Mr. Younger's cross-examination of me in the 25566 case to indicate that he believed that I had advocated 50 cents as a permanently proper and just difference. I want to get this record straight, so that ten years from now or one year from now no one will bring that up and say that "in such and such a case you testified so and so."

These exhibits have this other purpose, and that is to prevent the possible establishment of a higher difference (387) in this case, notwithstanding the fact that the carriers have proposed 50 cents. You do not entirely control what might come out of the decision.

I shall first tender my Exhibit F-67, which is a statement showing destination coal rate relationships between Central Freight Association points on coal from the Pittsburgh District.

(Exhibit F-67, Witness Brown, received in evidence.)

This is a statement of a few representative differences in rates, all of which, I believe, indicate that the 50-cent difference which now exists, Cleveland over Youngstown, is certainly adequate and which, if we had the proper kind of complaint case, we might justify as being more than adequate. I am not here attempting to do that. The exhibit is self-explanatory, I believe.

Mr. Hall: It is not entirely self-explanatory. Take the [fol. 1600] first page of Exhibit 67.

The Witness: It is just one page.

Mr. Hall: The mills per ton mile—is that the earning on the entire rate?

The Witness: On the difference only.

Mr. Hall: On the 50-cent difference?

The Witness: On the difference only, in each case.

(Narrative resumed.)

My Exhibit F-68 is a statement showing destination coal rate relationships between Trunk Line Association points, (388) and there again I have done the same thing. The distances, however, have been taken either from decisions

of the Commission or from Exhibits 67 and 67-A introduced by Witness Kern in Docket 25566.

(Exhibit F-68, Witness Brown, received in evidence.)

All of these differences indicate that the 50-cent difference, Cleveland over Youngstown, is extremely high.

My Exhibit F-69 is a statement showing differences in cents per net ton under various coal rate scales.

(Exhibit F-69, Witness Brown, received in evidence.)

It will be noted from this exhibit that a difference as high as 50 cents for a difference in distance of 67 miles occurs in the Holmes & Hallowell scale, the Alberta Coal Sales Company scale and the Majestic Coal Mining Company scale. The first of these is in the relatively high rated territory of the Northwest; the second applies in the further Northwest, and the third, according to my recollection, applies in the Southwest. I am not certain about that; [fol. 1601] but they are territories where the rates on coal are relatively high compared to those here.

I might cite the second item, wherein the Slider scale, which was prescribed for application from New Albany, Ind., to Indiana points, results in a rate of $1.25 for a distance of 110 miles, or 2 cents less than now exists from (389) Colona and Conway.

Cross-examination.

By Mr. Orcutt:

In appearing previously in I. & S. 3282 and 3619 and appearing here our only concern is one of the relationship of Cleveland over competing localities in the same general territory, including the Pittsburgh-Wheeling District, but not confining it to Youngstown, Canton and Massillon.

By Mr. John J. Fitzpatrick:

I am asked about the distances shown in Exhibit F-68: You will find those shown in the first three divisions of that exhibit in the decisions of the Commission to which reference is made. As to those in the last division, you will find them in Exhibits 67 and 67-A filed by Mr. Kern in Docket 25566. I did not personally check those distances.

Roy S. Kern (390) was recalled, and testified further as follows:

Mr. Baker: Mr. Examiner, I just wanted to ask Mr. Kern a question relating to his Exhibit F-22, namely, whether or not he can tell us whether at least some of the rates shown on that exhibit have been reduced by supplement No. 14 to P. & L. E. I.C.C. No. 2800, which is the rate authority cited in the exhibit, to be effective July 24, 1933.

[fol. 1602] The Witness: I have never seen that supplement, and it is not cited in this exhibit, Mr. Baker.

By Mr. Baker:

Q. As Chairman of the Committee, have you any knowledge as to whether or not the proposal for a reduction in at least some of these rates came before your Committee and has been now filed with the Commission in the form of a tariff supplement?

A. Yes and no. Yes to the point that a proposal was filed to reduce rates on coal from mines on the West Side Belt Division of the Pittsburgh & West Virginia Railroad to points on the Pittsburgh & Lake Erie Railway from Pittsburgh to Aliquippa, distances, as I recall it, ranging from about 18 to about 28 miles. The purpose of the proposal was to make rates from this section of the P. & W. V., competitive and on the same basis as rates from mines on the Montour Railroad to the same destinations for substantially the same distances. As to whether or not that tariff has been filed, I do not know. I know that it was not in my office when I left there last Saturday. (391)

Q. Let me ask you, with respect to the rate of $1.01 from Library, Pa., to Pittsburgh, which you note here as being a distance of 46.9 miles, whether you know that that rate has been reduced by the supplement to which I refer for intrastate traffic, but not reduced for interstate traffic.

A. I am sorry, Mr. Baker, but I do not know anything about contemplated reductions from Library, because Library is on the Montour Railroad, and I did not understand that those rates were involved.

Mr. Baker: May it be stipulated, Mr. Orcutt, that Supple-
[fol. 1603] ment No. 14 to the tariff cited in this exhibit of Mr. Kern may be referred to in similar manner as you

have stipulated with reference to the tariff covering the ex-river rate?

Mr. Orcutt: We will so stipulate.

The Witness: I might state, though, Mr. Baker, that Library is at the extreme end of the Montour Railroad in its relation to the City of Pittsburgh.

By Mr. Baker:

Q. It is one of the specific point-to-point rates mentioned in your Exhibit F-22, though?

A. That is right.

By Mr. Gutheim:

Q. Mr. Kern, is it a fact that there are rates from Montour mines lower than some of those you have shown on this exhibit for these short hauls?

A. My only aim in selecting these was to get typical normal (392) short haul rates, and naturally there are some lower and some higher.

Q. You mentioned specifically that these reductions that Mr. Baker directed your attention to were to meet the competition of rates from the Montour. Can you tell me whether there are rates from the Montour lower than those you show for these short hauls?

A. To that restricted area, yes.

(Narrative resumed.)

There are no rates from the Montour Railroad to the destinations in here (indicating) lower than 88 cents. When I say "destinations in here" I mean on the exhibits.

As to whether there are rates from the Montour lower [fol. 1604] than 88 cents, one that I know of is the local rate of the Montour Railroad. I do not know of any from points on the Montour to points on other lines lower than 88 cents.

By Mr. Baker:

I do not know what that specific rate is from Brownsville Junction to Pittsburgh, proper, as published in this P. & L. E. tariff I. C. C. 2800 which I do not show here among my selected rates from that tariff. (393) As to whether there are a number of rates in the cited tariff which may be

88 cents or lower, that are not included in my exhibit, I have not memorized the tariff.

I do not present the exhibit as being a complete statement of the general run of rates shown in the cited tariff. I did not undertake to copy the tariff. I undertook to show what I thought to be representative of the rates for these comparable distances.

By Mr. Orcutt:

The rate, and the tariff reference to it, from the Leetonia Group to Youngstown is $1.04, as published in Agent F. E. Davis' Tariff I. C. C. No. 48, Ohio No. 48. The rate from the Leetonia Group to Cleveland is $1.54, named in the same tariff. (394)

I am asked does a portion of the Leetonia Group lie between Conway and Youngstown, approximately. Geographically, yes.

By Mr. Gutheim:

By geographically I do not mean on the railroad. (393, 394, 395)

(Hearing closed at 10:55 A. M.)

[fol. 1605] **Plaintiff's Exhibit 1**

INTERSTATE COMMERCE COMMISSION, WASHINGTON.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Order of the Commission entered April 26, 1929,

Transcript of the stenographer's notes of the hearings held at Washington, D. C., May 27 and 28, 1929, before Examiners Curtis and Berry, and of exhibits filed at said hearings or in response to requests made at the hearing,

Report and order of the Commission filed and entered March 27, 1930,

Second petition for reopening, reconsideration or rehearing filed January 6, 1933,

Answer of Western Pennsylvania Coal Traffic Bureau to second petition for reopening, reconsideration or rehearing, filed January 16, 1933,

Answer of The Youngstown Chamber of Commerce, Protestant, to second petition for reopening, reconsideration or rehearing, filed January 16, 1933, and

Answer of The Youngstown Sheet and Tube Company, Protestant, to second petition for reopening, reconsideration or rehearing, filed January 16, 1933,

in Investigation and Suspension Docket No. 3282, Coal, Bituminous, Ex-River, from Colona and Conway, Pa., to Youngstown, Ohio, the originals of which are now on file and of record in the office of this Commission.

In Witness Whereof I have hereunto set my hand and affixed the seal of said Commission this 15th day of February, A. D. 1934.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 1606] Interstate Commerce Commission, Division 2,

Investigation and Suspension Docket No. 3282

Coal, Bituminous, Ex-River, from Colona and Conway, Pa., to Youngstown, Ohio.

Order for Hearing, etc.—April 26, 1929

It appearing that there have been filed with the Interstate Commerce Commission by The Pennsylvania Railroad Company and The Pittsburgh and Lake Erie Railroad Company tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 15th day of May, 1929, designated as follows:

The Pennsylvania Railroad Company: I. C. C. No. 81;

The Pittsburgh and Lake Erie Railroad Company: I. C. C. No. 2928;